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No. 81-1863

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

UNITED STATES OF AMERICA, et al., Appellants;

v.

MARY T. GRACE, THADDEUS ZYWICKI, Appellees

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

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QUESTION PRESENTED

Whether 40 U.S.C. §13k, which prohibits all expressive activity anywhere on the Supreme Court grounds, no matter how unobtrusive or unrelated the expression is to the administration of justice, violates the First and Fifth Amendments.

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MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the judgment and opinion of the court of appeals be affirmed on the ground that it is manifest that the decision of the court of appeals is plainly correct, such that further argument on the issue in this Court is unnecessary. Appellees request the Court to enter an Order affirming the court of appeals on the ground that 40 U.S.C. §13k is repugnant to the First and Fifth Amendments.

OPINIONS BELOW

The opinion of the court of appeals (Appendix to Appellants' Jurisdictional Statement 1a-49a)[hereinafter, Gov't App.] is reported at 665 F.2d 1193 (D.C.Cir. 1981). The opinion of the district court is reported at 524 F.Supp. 815 (D.D.C. 1980)(Gov't App. 56a-68a).

JURISDICTION

The judgment of the court of appeals (Gov't App. B 50a-51a) was entered on September 8, 1981, and a petition for rehearing or for rehearing en banc was denied on November 12, 1981 (Gov't App. C 52a). A notice of appeal was filed on December 11, 1981 (Gov't App. E 70a). Mr. Justice Brennan, on February 2, 1982, extended the time for docketing the appeal up to and including April 9, 1982.

Appellate jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1252.

STATUTORY PROVISION INVOLVED

40 U.S.C. §13k provides:

> It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement.

Other relevant statutory provisions are set forth in Appellees' Appendix 31a-37a [hereinafter, Grace App.].

STATEMENT

A. Facts[1/]

In May 1978 appellee Thaddeus Zywicki, an elderly Catholic missionary, stood alone on the sidewalk in front of the Supreme Court near a coin-operated Washington Star vending machine. Complaint, Grace v. Burger, No. 81-1205 (D.D.C. filed May 13, 1980) [hereinafter, Complaint] ¶12 (Grace App. 1a-2la, 4a). Mr. Zywicki was distributing a handbill which contained a reprint of a letter to the editor of The Washington Post from a United States Senator concerning the subject of removal of unfit judges from the bench. Complaint ¶12 and Exhibit 1 to Complaint (Grace App. 4a, 11a). A Supreme Court police officer approached Mr. Zywicki and informed

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1/ Since the district court dismissed appellees' Complaint for failure to exhaust administrative remedies (Gov't App. 69a), the facts outlined in the Complaint are to be taken as true. Both the government and the district court have accepted the factual allegations of the Complaint (Gov't App. 3a & n. 3, 56a).

The district court's ground for dismissal has never been advanced or adopted by the government. See Jurisdictional Statement at 3 & n. 2; Grace v. Burger, 665 F.2d 1193 (D.C. Cir. Sept. 8, 1981)(Gov't App. 1a-47a, 5a-8a) [hereinafter Grace v. Burger]; and Brief for [Government] Appellees in the court of appeals at 4 ("we do not advance the exhaustion of administrative remedies reasoning of the District Court ...").

him that Title 40 of the federal code prohibited the distribution of leaflets on Supreme Court grounds, which included the sidewalk abutting the curb. Complaint ¶13 (Grace App. 4a-5a). Fearing arrest, Mr. Zywicki left the Supreme Court grounds.

On January 8, 1980, Mr. Zywicki returned to the sidewalk in front of the Court, this time distributing handbills containing an invitation to the recipient to attend a religious meeting termed "a religious reflection in solidarity with the oppressed peoples of Central America." Complaint ¶14, Exhibit 2 to Complaint (Grace App. 5a, 12a). An officer soon approached Mr. Zywicki and informed him that an Act of Congress forbade leafletting on Supreme Court grounds. Mr. Zywicki asked the officer whether he would be arrested if he continued leafletting to which the officer responded that he would. Fearing arrest, Mr. Zywicki again left. Complaint ¶15 (Grace App. 5a).

On February 4, 1980, Mr. Zywicki once again attempted to distribute leaflets on the sidewalk in front of the Court near the newspaper vending machines. Complaint ¶¶16, 18 (Grace App. 5a-6a). Counsel herein had informed Mr. Zywicki that a judge of the Superior Court of the District of Columbia in a criminal prosecution under 40 U.S.C. §13k in the Superior Court, had narrowed the application of §13k to conduct performed with the specific intent to influence, impede or obstruct the administration of justice. Complaint ¶16; Exhibit 3 to Complaint (United States v. Ebner, No 12487-79, transcript of proceedings at 40-41)(D.C. Super. Ct. Jan. 22, 1980)(Hannon, J.)(Grace App. 5a-6a, 18a-19a). When Mr. Zywicki informed counsel that he wanted to distribute handbills concerning human and political oppression in Guatamala, counsel informed Mr. Zywicki that §13k, as narrowed by the Superior Court, would allow such leafletting. Complaint ¶16 (Grace App. 5a).

On February 4, 1980, Mr. Zywicki distributed a few handbills, but was soon approached by a Supreme Court police officer who warned Mr. Zywicki that unless he ceased leafletting, he would be arrested. Mr. Zywicki stated that he understood the statute had been modified by a judge. Complaint ¶18 (Grace App. 6a). The officer used a walkie-talkie and apparently called someone inside the Supreme Court building. Eventually a Mr. White emerged from the building and informed Mr. Zywicki that the statute had not been changed and that Mr. Zywicki was subject to arrest for leafletting on Supreme Court grounds. Id. Mr. Zywicki protested the fact that the newspaper was allowed to distribute its papers while appellee was prohibited from distributing printed matter of his choosing. Complaint ¶19 (Grace App. 6a). Mr. Zywicki also asked why the statute did not forbid raising and lowering the American flag, displayed on the outside grounds of the Court. Id. To avoid arrest, however, Mr. Zywicki once again left the grounds of the Court. Id. The repeated threats of arrest have caused Mr. Zywicki to refrain from returning to the Supreme Court grounds to exercise his rights protected by the First Amendment. Complaint ¶20 (Grace App. 6a).

Upon learning of these events, appellee Grace arrived on the Supreme Court grounds on March 17, 1980, and stood on the sidewalk near the street, a few feet away from The Washington Post and The Washington Star vending machines. Complaint ¶¶21, 22 (Grace App. 6a-7a). Ms. Grace unfolded a sign (measuring approximately four feet by two and a half feet) inscribed verbatim with the text of the First Amendment. She stood in a peaceable, orderly manner, had no intent to interfere with the Court's work, and didn't even know whether or not the Court was in session. Complaint ¶¶20-23 (Grace App. 6a-7a). Rather, "[h]er purpose was to communicate the message of the First Amendment in a public place

peculiarly suited for such a message." Complaint ¶23 (Grace App. 7a)(emphasis added).

Shortly after noon, a Supreme Court officer, appellant Drexhagen, ordered Ms. Grace to leave the grounds of the Court, citing 40 United States Code. Complaint ¶24 (Grace App. 7a). Ms. Grace asked the officer if he had read her sign and, if so, why she had to move, stating that she had as much right as the newspapers to be present. Complaint ¶25 (Grace App. 7a). Officer Drexhagen informed Ms. Grace that she would have to follow him inside the building if she refused to move and, fearing arrest, she left the Court grounds. Complaint ¶26 (Grace App. 7a).

Both Mr. Zywicki and Ms. Grace are eager to exercise their First Amendment rights on the Court grounds and would return but for the spectre of arrest. Complaint ¶27 (Grace App. 7a). On May 13, 1980, appellees filed a Complaint in the district court seeking injunctive and declaratory relief. Complaint (Grace App. 1a-10a). Appellees Grace and Zywicki challenged 40 U.S.C. §13k on First and Fifth Amendment grounds both on its face and as applied.

The parties filed cross-motions for summary judgment, in support of which the government filed an affidavit of Marshal Wong who stated that no expressive activity is allowed on the grounds of the Court (Grace App. 38a). The motions for a preliminary injunction and for summary judgment were argued in the district court on June 11, 1980 (Grace App. 39a-57a). During this hearing, the government conceded that §13k, by its terms, renders unlawful the placing and maintaining of newspaper vending machines on the Court grounds (Grace App. 51a-56a).

Although none of the parties presented or argued the issue, the district court dismissed the complaint for failure to exhaust

administrative remedies, holding that Ms. Grace and Mr. Zywicki should have applied to the Marshal for a permit.[2/] As noted at n.1, supra, the government has never advanced the rationale of the district court, arguing instead that an absolute ban on expressive activity on Supreme Court grounds is consistent with the First Amendment.

The court of appeals held that the district court's holding was "plainly erroneous." Grace v. Burger (Gov't App. 5a). Since the facts of the case were undisputed and because the parties had briefed and argued the merits of §13k's constitutionality both in the district court and in the court of appeals, the appeals court reached the merits of the case and held §13k unconstitutional as repugnant to the First Amendment. Id. (Gov't App. 2a, 8a-9a & n.9). Moreover, the court of appeals found that in view of the legislative history (Grace App. 34a) and the "decades of consistently broad enforcement" (Gov't App. 28a-29a), the statute was not susceptible to a limiting construction. The court reviewed the other statutes applicable to the Court and found sufficient statutory protection of the integrity of the Court in 18 U.S.C. §1507 (Grace App. 37a). The court decidedly rejected the government's argument that "interests in order and decorum can, consistently with the First Amendment, justify a total prohibition of all expressive conduct at all times and on all of the Supreme Court grounds." (Gov't App. 29a).

Significantly, prior to oral argument before the appellate court, the court of appeals took judicial notice of a newspaper article appearing in The Washington Star on January 6, 1981 (Grace

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2/ There are no available procedures for seeking a permit to engage in expressive activity on Supreme Court grounds. Grace v. Burger (Gov't App. 5a-8a). Moreover, Marshal Wong's Affidavit clearly states that no expressive activity on the Court's grounds is allowed (Grace App. 38a).

App. 26a), which contained a photograph and a story depicting the filming of "The First Monday in October" on the steps of the Supreme Court. (Grace App. 22a-30a). The events depicted in the Star photograph and news article were thus incorporated into the record of this case.

B. Statutes Applicable to Supreme Court Grounds

Congress has enacted several statutory provisions intended to protect the dignity and decorum of the Court, as well as to preserve the appearance of insulation from the "mob" influence. Title 18 U.S.C. §1507, the basic provisions of which were mirrored in a state statute upheld by the Court in Cox v. Louisiana, 379 U.S. 559 (1965)(Cox II), prohibits picketing or parading near a federal courthouse with the specific intent to obstruct, influence or impede the administration of justice.[3/] The court of appeals found that §1507 provided ample protection of the governmental interests in protecting the judicial system from the pressures which courthouse picketing may engender. Grace v. Burger (Gov't App. 21a-24a).

There are, in addition to §1507, several statutes specifically applicable to the Supreme Court grounds of which section 13k is a part (Grace App. 31a-33a). Title 40 U.S.C. §13a entrusts the "structural and mechanical" care of the Court to the Architect of the United States Capitol. All other duties relating to the care and custody of the Supreme Court building are delegated to the Marshal of the Supreme Court, who is deemed the "superintendent"

3/ Although Judge MacKinnon, during oral argument in the court of appeals, implied that appellee Grace's action of standing on the Court grounds with a sign inscribed with the text of the First Amendment might have violated §1507 (Grace App. 69a-70a), the record is conclusive that Ms. Grace was not attempting to influence the Court and, in fact, did not even know whether the Court was in session. Complaint ¶23 (Grace App. 7a).

of the building. 40 U.S.C §13c. Section 13f empowers the Marshal, "under the general supervision and direction of the Chief Justice," to employ special officers to police the grounds. Section 13h renders it unlawful to "offer or expose any article for sale" in the building or on the grounds or "to display any sign, placard, or other form of advertisement therein; or to solicit ... subscriptions or contributions therein." 40 U.S.C. §13h. Section 13i and g prohibit climbing upon statues, walls or fountains or disturbing the shrubs, plants or trees in the building or grounds. Section 13j prohibits the discharge of firearms, explosives or fireworks as well as prohibiting the making of any "harangue or oration" or using any "loud, threatening or abusive language" in the building or grounds.

A significant provision in the statutory scheme is §13 1 which empowers the Marshal to:

> prescribe such regulations, approved by the Chief Justice of the United States, as may be deemed necessary for the adequate protection of the Supreme Court Building and grounds and of persons and property therein, and for the maintenance of suitable order and decorum within the Supreme Court Building and grounds.
>
> 40 U.S.C. §13 1 (a).

Section 13 1(b) requires that any such promulgated regulation be published in a daily newspaper published in the District of Columbia, said regulations not becoming effective until ten days after publication. 40 U.S.C. §13 1(b).[4/]

4/ The only regulation promulgated under §13 1 concerns the hours during which the Court is open to the public. The Washington Star (Nov. 26, 1975); The Washington Post (Nov. 27, 1975).

The only other written policy is contained on pages 22-23 of the Supreme Court of the United States Policy Training Manual written by the S.C.U.S. Police Board in 1972 (Grace App. 40a-42a). This is not a public document and was not promulgated in accordance with §13 1. Its prohibition of distribution of leaflets or other literature on Supreme Court grounds may have provided the basis

Section 13m details the penalties for violations of section 13g through 13k, or of any regulations promulgated under §13 l, and provides that prosecutions for such offenses shall occur in the Superior Court of the District of Columbia, prosecuted by the United States Attorney. Section 13n empowers the Supreme Court police to make arrests on Supreme Court grounds for violation of any provisions of sections 13g-13k or any 13 l regulations.

Section 13o allows the Marshal to suspend application of sections 13g-13k "to permit the observance of authorized ceremonies" within the building or grounds. 40 U.S.C. §13o. Finally, section 13p defines the "grounds" of the Court basically as encompassing the block upon which the Court is located, up to the face of the curbs of the sidewalk constituting the perimeter of the grounds.

ARGUMENT

Only one skilled in the art of sophistry could seriously argue that 40 U.S.C. §13k, which not only "abridges" but altogether prohibits the exercise of pristine and time-honored First Amendment rights, is a "narrow restriction" which "does not impose a significant burden on protected speech" and which leaves open "ample alternative means" of exercise of First Amendment rights. Jur. Stmt. at 6-7. The truth is that §13k is an offense to the tradition of liberty and the ideals of democracy enshrined in the First Amendment. The all-embracing language of §13k, far from a "content neutral" regulation, has allowed the Marshal and the Supreme Court Police to administer the statute in an arbitrary and selective manner. The Washington Post is allowed to disseminate

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4/ (cont.) for Marshal Wong's Affidavit (Grace App. 38a) that no leafletting or other expressive activity is allowed on the grounds of the Court.

its point of view with impunity, in a manner which the government has conceded is in violation of §13k (Grace App. 56a), and which is also prohibited by §13h, a provision apparently ignored by the Supreme Court Police. Moreover, the government's argument in the district court that the statute is directed even-handedly against personal conduct is belied by the Marshal's tolerance of assemblages of persons for purposes of filming a commercial movie. See appellee's Motion and the Court of Appeals Order taking Judicial Notice (Grace App. 22a-30a).

The government's arguments that §13k protects important governmental interests in preserving the sanctity, decorum and symbolic value of the Court ignores the fact that ample statutory protection of the integrity of the Court exists without application of the sweeping, selectively administered provisions of §13k. Certainly, when the Framers enacted the First Amendment they considered whether allowing expressive activity would inconvenience the three branches of government, but the First Amendment itself is testimony to the Framers' rejection of any "balancing" of pure speech rights against the interest of government in functioning in an atmosphere insulated from the views of the people.

Simply stated, the First Amendment does not allow prohibiting the pristine expressive activity involved in silent, peaceable lone leafletting or signholding where such expression is not "basically incompatible with the normal activity of [that] particular place at [that] particular time." Grayned v. City of Rockford, 408 U.S. 104, 116 (1972). It must be remembered that appellees exercised their rights on the public sidewalk very near the street and distant from the entrance to the Court, next to the newspaper vending machines and close to a Metrobus bus stop.

The court of appeals manifestly was correct in holding §13k

violative of the First Amendment. The unpersuasive force of the government's arguments advanced in the Jurisdictional Statement do not merit further review of the Court.

1. Section 13k, on its face and as applied to appellees' activities of lone leafletting and lone signholding, constitutes a blatant violation of the First Amendment and presents a classic case of "overbreadth," in violation of the First and Fifth Amendments. The government's averment that it is a neutral regulation applied uniformly to all expression without regard to content, and that "[n]either the district court nor the court of appeals found any evidence of discriminatory enforcement" misrepresents the record and distorts common sense. Jur. Stmt. at 7.

First, during oral argument in the district court, government counsel conceded that the placing and maintenance of the newspaper vending machines violated the terms of §13k. The government argued that §13k only prohibits personal conduct and not distribution of the Post and Star via vending machines, but the district court responded:

> The Court: Mr. Lawrence, I hear you. That machine didn't walk there, it got there by somebody's personal conduct. An agent of The Washington Post put it there. Why isn't his putting it there unlawful? He is displaying a device ...
>
> Mr. Lawrence: Well, Your Honor, again ...
>
> The Court: That person has violated this statute, hasn't he, as it is written?
>
> Mr. Lawrence: It may very well be, Your Honor.
>
> The Court: How could it not be?
>
> Mr. Lawrence: I am not sure, Your Honor. I don't know how it could not be.
>
> (Grace App. 55a-56a.)

Second, the court of appeals took judicial notice that the commercial movie "First Monday in October" was filmed on the steps of the Court (Grace App. 30a). The photograph (Grace App. 26a)

obviously depicts an "assemblage" of persons in violation of the first phrase of §13k. Certainly, such an assemblage is far more disruptive of the sanctity and decorum of the Court than is a lone signholder or lone leafletter standing, not parading or picketing, on the sidewalk near the curb.

Third, the government, and apparently the Marshal and Supreme Court Police, have refrained from applying §13h's prohibition of the sale, exposure, display or solicitation of subscriptions and contributions to maintenance of the newspaper vending machines.

Fourth, the statute by its terms prohibits the display of buttons, T-shirts, lapel pins, and even the flag, on the Supreme Court grounds, yet no one could seriously argue the Supreme Court Police threaten to arrest people wearing American flag lapel pins, college T-shirts, Phi Beta Kappa pins, and other such insignia. See, Jeannette Rankin Brigade v. Chief of Capitol Police, 342 F. Supp. 575, 586 n. 13 (D.D.C.)(three-judge court), aff'd, 409 U.S. 972 (1972).[5/]

The absolute ban on expressive activity encompassed in §13k cannot withstand First Amendment scrutiny. The sidewalk surrounding the Court is a public sidewalk with the accompanying accouterments characteristic of a public sidewalk, e.g., a Metrobus bus stop and newspaper vending machines. Such public places

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5/ During oral argument before the court of appeals, the government admitted uncertainty whether §13k rendered unlawful the wearing of insignia type T-shirts (Grace App. 73a). This underscores the "vagueness" inhering in a statute suffering from such a degree of overbreadth that even the government attorney is unsure whether the police could arrest a group of judges standing in an "assemblage" on the Court's steps, wearing some insignia of their alma mater. If the United States Attorney is uncertain as to the reach of the statute, then no court could reasonably expect the person of ordinary intelligence to be on notice as to what §13k allows and what it forbids. Realistically, the breadth of the statute is such that, at bottom, §13k prohibits whatever the Marshal or Supreme Court Police decide it prohibits.

traditionally "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 515 (1939). The fact that the sidewalk at issue is part of the grounds of the Supreme Court does bring to bear certain other legitimate governmental concerns, but sufficient statutory provisions exist to accomodate these concerns without §13k's absolute prohibition.

Lone leafletting or lone signholding is not "basically incompatible" with the normal use of the Court sidewalk. Grayned v. City of Rockford, 408 U.S. 104 (1972). Nor does such activity impair the functioning of the Court.

The government argues, however, that expressive activity on the Court's grounds may impact on the public's perception of the integrity of the Court. The government maintains that a demonstration on the grounds of the Court could be seen as decisively influencing the Court regarding the subject matter of the expression. But this argument is self-defeating, as the government agrees that such a demonstration could take place across the street from the Court. Jur. Stmt. at 9. Common sense dictates that the public perception of such a demonstration's "influence" on the Court is unlikely to depend upon whether the demonstration occurs on the sidewalk of the Court or merely across the street. Moreover:

> an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion and contempt much more than it would enhance respect.
>
> Bridges v. California, 314 U.S. 252, 270-71 (1941)(Black, J.).

The First Amendment affords virtually absolute protection to the religious and political lone leafletter. Hynes v. Mayor of Oradell, 425 U.S. 610 (1976); Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 313 (1967); Martin v. Struthers, 319 U.S. 141 (1943);

Murdock v. Pennsylvania, 319 U.S. 105 (1943); Cantwell v. Connecticut, 310 U.S. 296 (1940); Lovell v. Griffin, 303 U.S. 444 (1938). Although the Court has recognized that public safety considerations may authorize certain time, place and manner restrictions on the exercise of First Amendment rights, even the government does not argue that §13k is a time, place and manner regulation. Nor could it since the statute flatly prohibits expressive activity at any time, at any place and in any manner on the Supreme Court grounds.

Additionally, in those few instances where the government has demonstrated a compelling need to restrict expressive conduct, the Court has emphasized that "First Amendment freedoms need breathing space to survive [and] government may regulate in the area only with narrow specificity." NAACP v. Button, 371 U.S. 415, 433 (1963). Additionally, any burden upon expressive activity must be no greater than is essential to accomplish the government's legitimate interest. United States v. O'Brien, 391 U.S. 367 (1968); Shelton v. Tucker, 364 U.S. 479 (1960). As the Court instructed in Carroll v. President & Comm'rs of Princess Anne County, 393 U.S. 175, 183 (1968), statutes:

> in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order.

Section 13k fails to satisfy any of the fundamental principles of Constitutional jurisprudence.

The government contends that §13k imposes but a minimal burden on appellees' First Amendment rights and that ample alternative locations exist to accomodate appellees' expressive activity. All too often the government's response to a citizen's exercise of First Amendment rights is to argue that the citizen should have gone somewhere else to exercise his or her rights. The Court,

however, has consistently rejected this distorted view of the First Amendment emphasizing that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Schneider v. State, 308 U.S. 147, 163 (1939); Spence v. Washington, 418 U.S. 405, 411 n. 4 (1974). The mere fact that expression may inconvenience the government is insufficient to justify its absolute prohibition. "Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots." Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 513 (1969).

Although the Supreme Court differs functionally from the executive and legislative branches, it should not be elevated above the other branches of government for First Amendment purposes where the activity at issue bears no relation to the function or pending business of the Court. Even Cox II recognized circumstances rendering a courthouse susceptible to legitimate First Amendment activity. 379 U.S. at 567.

2. The government has asserted various interests which allegedly justify a complete ban on expressive activity, all based on the assumption that, on balance, the peculiar symbolic importance of the Court renders it immune from all First Amendment activity, no matter how innocuous the exercise of rights or whether the activity has any impact on the Court's function or pending docket. These same interests of assuring a solemn, dignified atmosphere on the Capitol grounds were rejected by the three-judge court in Jeannette Rankin, a decision which was affirmed by this Court.

These are, at best, intangible interests. The government has never introduced any evidence to support the proposition that all expressive activity threatens these interests. The government

cannot create a legitimate, compelling interest merely by stating it. Rather, the government bears the burden of producing evidence to support its claim that the activity at issue threatens a recognized interest. Larson v. Valente, No. 80-1666, 50 U.S.L.W. 4411, 4417 (U.S. April 21, 1982).

The court of appeals also rejected the government's argument that the unique character of the Court justifies a complete ban on speech, finding other statutory mechanisms fully capable of protecting these interests. The court noted:

> it would be tragic if the grounds of the Supreme Court, unquestionably the greatest protector of First Amendment rights, stood as an island of silence in which those rights could never be exercised in any form.
>
> (Gov't App. 27a).

A primary concern raised in the government's Jurisdictional Statement is that expressive activity on the grounds of the Court may cause the public to question the impartiality of the Court. In fact, the government has done far more to cause the public to question the Court's integrity by appealing the judgment below than any of appellees' activities (See Grace App. 79a-80a). In contrast to the amorphous threat to the appearance of propriety posed by appellees' conduct, the government's appeal has created actual controversy concerning the propriety of the Court deciding this case. Thus it is the government and not appellees who have created the danger of "the judicial process ... being misjudged in the minds of the public." Cox II, supra, 379 U.S. at 565.

Also, the government complains of the problems "picketing and demonstrating" on Supreme Court grounds may occasion without recognizing the authority delegated to the Marshal, subject to approval by the Chief Justice, to promulgate regulations to assure decorum and order on Court grounds. 40 U.S.C. §13 1.

Demonstrations, picketing and parading may be regulated and even lone leafletters or lone signholders are subject to the prohibitions against oratory, harangues, or loud and abusive language. 40 U.S.C. §13j. It bears noting that appellees have never argued that Supreme Court grounds are an appropriate forum for mass "demonstrations," even though the government continually focuses on the effect of "demonstrations" on Supreme Court decorum. Section 13k is an absolute ban on expression, of which a "demonstration" is but one variety. Section 13k, and the government's arguments supporting it, render a mockery of the First Amendment's clear command that Congress shall make no law abridging freedom of speech, press or religion.

The "balancing" approach employed by the government misconceives the degree of protection the First Amendment confers upon peaceful lone leafletting, signholding or distribution of religious material. Even assuming a legitimate governmental interest, Congress must regulate as narrowly as possible. Throughout this litigation the government has labelled appellees' activity as "conduct" rather than pure speech, yet, if appellees were not engaged in pure speech, then that term no longer has any meaning. Unlike the draft card burning at issue in United States v. O'Brien, 391 U.S. 367 (1968), or even the epithet at issue in Cohen v. California, 403 U.S. 15 (1971), which the Cohen dissenters characterized as "mostly conduct and little speech," appellees' activities were unquestionably mostly speech and little conduct. Certainly appellees' activity was less disruptive and more deserving of protection than the offensive language protected in Cohen.

Necessarily, exercise of one's First Amendment rights involves conduct; one must act in order to communicate, but lone leafletting

and silent, stationary signholding involve the "purest" exercise of First Amendment rights contemplated by the Constitution. In these circumstances, the "balancing" approach used by the government fails to accord the First Amendment the respect it is due. As Chief Justice Burger emphasized in a related context:

> We all seem to agree that whatever the legitimate public interest in this area, proper analysis requires us to scrutinize the precise means employed to implement that interest. The balancing test used by the Court ... has failed to give the traditional standing to some of the First Amendment values at stake here.
>
> Buckley v. Valeo, 424 U.S. 1, 238 (1976).

The government makes much of the Court's cases which have allowed restriction of First Amendment activity because the locus of the activity is inconsistent with the exercise of First Amendment rights. E.g., Greer v. Spock, 424 U.S. 828 (1976)(campaigning on military base not ordinarily open to the public); Adderly v. Florida, 385 U.S. 39 (1966)(demonstration on jailhouse driveway used exclusively for jail-related functions). But none of these cases involved lone leafletting on a public sidewalk which, like any other sidewalk, is not dedicated to a governmental function essentially at odds with free expression. Nor does Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981), support the government's view since the Heffron Court found that the statute regulating distribution of religious literature did not constitute "a ban on such protected activity in the relevant public forum," but merely regulated the place and manner of distribution within the public fairgrounds. Id. at n. 16.
Unlike the above discussed cases, §13k absolutely forbids First Amendment activity in areas like the sidewalk, which are traditionally open to the public.

Aside from the First Amendment violation inhering in §13k, the statute suffers from classic overbreadth and vagueness problems, in violation of the Fifth Amendment. See part 1 supra & n. 5. Even the United States Attorney has admitted uncertainty concerning the reach and breadth of §13k (Grace App. 73a). Under these circumstances, the citizen of average intelligence can hardly be expected to be on notice as to what the law allows and what it forbids. Grayned v. City of Rockford, 408 U.S. 104 (1972). The danger of arbitrary and selective enforcement common to vague and overbroad statutes is a reality in this case. The record is replete with instances of selective enforcement. Indeed, a literal reading of the statute renders unlawful a multitude of innocent activity ranging from raising and lowering the flag on Supreme Court grounds to the wearing of college or law school T-shirts by Court personnel in the upstairs basketball court.

In sum, the First Amendment and §13k are inherently conflicting. The court of appeals was plainly correct in honoring the former rather than the latter. Upholding §13k would surely signal the dying breath of the First Amendment. Appellees are confident the Court will vindicate the interests of liberty and democracy enshrined in the First Amendment, whose very words, inscribed on appellee Grace's placard, were prohibited from view on the Supreme Court grounds.

CONCLUSION

The flagrant insult to the First Amendment posed by §13k calls for a profound statement by the Court recognizing the supremacy of the First Amendment. Appellees urge the Court to summarily affirm the judgment and opinion of the court of appeals and to issue a

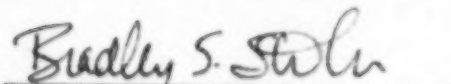
strong statement, signed by each of the Justices participating in the case, declaring $13k repugnant to the First Amendment. See Cooper v. Aaron, 358 U.S. 1 (1958).

Respectfully submitted,

MARY T. GRACE
THADDEUS ZYWICKI
By Counsel

Counsel for Appellees:

SEBASTIAN K.D. GRABER



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Office - Supreme Court, U.S.
FILED
MAY 27 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1863

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

UNITED STATES OF AMERICA, et al., Appellants;

v.

MARY T. GRACE, THADDEUS ZYWICKI, Appellees.

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

MOTION TO PROCEED IN FORMA PAUPERIS

Appellees, by counsel, respectfully request the Court for leave to proceed on appeal in forma pauperis. Appellees are without sufficient funds to pay the costs or to give security for the expenses of the appeal. Appellees have been allowed to proceed in forma pauperis in the courts below and respectfully request the Court to grant leave to proceed in forma pauperis in the instant appeal.

Appellees' Affidavits in support of this motion are attached hereto.

Respectfully submitted,

MARY T. GRACE
THADDEUS ZYWICKI
By Counsel

Counsel for Appellees:

SEBASTIAN K.D. GRABER

BRADLEY S. STETLER

NORMAN A. TOWNSEND

GRABER, STETLER & TOWNSEND
1019 King Street
P.O. Box 146
Alexandria, VA 22313
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Certificate of Service

I hereby certify that one true and accurate copy of the foregoing appellees' Motion to Proceed In Forma Pauperis, as well as the two Affidavits in support of the motion, were mailed, postage pre-paid, to Rex E. Lee, Esq., Solicitor General of the United States, Department of Justice, Room 5143, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20530 on this 27th day of May, 1982.

SEBASTIAN K.D. GRABER

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,	:	
	:	
Appellant;	:	
	:	
v.	:	No. 81-1863
	:	
MARY T. GRACE	:	
THADDEUS ZYWICKI,	:	
	:	
Appellees.	:	

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, MARY TERESE GRACE, affirm, depose and say that I am the Appellee in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress;

I further affirm that the responses which I have made to the questions and instructions below relating to my ability to pay the cost herein are true.

1. Are you presently employed? Yes.

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

      (1) Special Populations - Recreation Leader II
      Arlington County Rec. Approximately $100 per month
      900 Park Ave.
      Arlington, VA
      Beth Zeidman

(2) Graber, Stetler & Townsend – Office Maintenance
1019 King Street Approximately $40 per month
P.O. Box 146
Alexandria, VA 22313

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No.

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependant upon you for support and state your relationship to those persons.

My child, 10½ months old.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Mary Terese Grace
MARY TERESE GRACE

VIRGINIA
City of Alexandria

Subscribed and affirmed to before me on this 24th day of May, 1982.

My Commission expires: 3/25/85

Jennifer Ayers
NOTARY PUBLIC

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,	:	
	:	
Appellant;	:	
	:	
v.	:	No. 81-1863
	:	
MARY T. GRACE THADDEUS ZYWICKI,	: :	
	:	
Appellees.	:	

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, THADDEUS ZYWICKI, being first duly sworn, depose and say that I am the Appellee in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress;

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost herein are true.

1. Are you presently employed? No.

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. Stipend as missionary in 1972.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment or in the form of rent payments, interest, dividends, or other source? Yes.

   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. $150.00 Social Security monthly and ± $150.00 in stipends the past year.

3. Do you own any cash or checking or savings account? Yes.

   a. If the answer is yes, state the total value of the items owned. Automatic deposit of monthly Social Security $150.00 each month.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

   a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependant upon you for support and state your relationship to those persons. None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Thaddeus Zywicki
THADDEUS ZYWICKI

VIRGINIA
City of Alexandria

Subscribed and sworn to before me on this 26th day of May, 1982.

Geneva D. Harwood
NOTARY PUBLIC

My Commission expires: June 26, 1982

Office - Supreme Court, U.S.
FILED
MAY 27 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1863

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

UNITED STATES OF AMERICA, et al., Appellants;

v.

MARY T. GRACE, et al., Appellees.

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

APPENDIX FOR APPELLEES

SEBASTIAN K.D. GRABER
BRADLEY S. STETLER
Counsel for Appellees

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Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY TERESE GRACE
4818 N. 22nd Road
Arlington, Virginia
(703) 524-4587,

THADDEUS ZYWICKI
414 N. Edgewood Street
Arlington, Virginia
(703) 528-3204,

Plaintiffs;

v.

Civil Action No._____

WARREN E. BURGER,
Chief Justice of the
United States Supreme
Court
Supreme Court of the
United States,

SERVE: The Honorable
Warren E. Burger
Chief Justice of the
Supreme Court of the
United States
1 First Street, N.E.
Washington, D.C.,

A. WONG,
Marshal of the United
States Supreme Court

SERVE: A. Wong
Marshal of the Supreme
Court of the United
States
I First Street, N.E.
Washington, D.C.,

JAMES ZAGAMI,
Captain United States
Supreme Court Police

SERVE: JAMES ZAGAMI
Captain, United States
Supreme Court Police
1 First Street, N.E.
Washington, D.C.,

JOHN H. DEREXHAGEN,
Badge Number 5
Officer, United States
Supreme Court Police

SERVE: John H. Derexhagen
Badge No. 5
United States Supreme
Court Police
United States Supreme
Court
1 First Street, N.E.
Washington, D.C.,

COMPLAINT

MOTION FOR A PRELIMINARY INJUNCTION ATTACHED

UNITED STATES OF AMERICA :
:
SERVE: United States :
Attorney for the District :
of Columbia :
United States Courthouse :
3rd and Constitution :
Avenues, N.W. :
Washington, D.C.; :
:
and :
:
Attorney General of the :
United States :
Department of Justice :
Washington, D.C. :
By registered mail, :
:
Defendants; :

JURISDICTION

1. Jurisdiction of this Court is attained pursuant to 28 U.S.C. §1331(a), 1361, 2201, 2202, and the First, Fourth, Fifth and Ninth Amendments to the United States Constitution.

PARTIES

2. Plaintiff Mary Terese Grace is, and was at all times mentioned herein, a citizen of the United States and a resident of the Commonwealth of Virginia. Plaintiff Grace is a pacifist Christian concerned with the continued vitality of the First Amendment. Her legal name is Mary Grace Birch, but she is in the process of filing a petition for a change of name to Mary Terese Grace in Arlington County, Virginia.

3. Plaintiff Thaddeus Zywicki is a Catholic Missionary and a citizen of the United States and a resident of Arlington, Virginia.

4. Defendant Warren E. Burger is Chief Justice of the United States Supreme Court. His statutory duties and authority under 40 U.S.C. §13(f) include supervision and direction of the Marshal of the Supreme Court of the United States. He is sued in his official capacity.

5. Defendant A. Wong is the Marshal of the Supreme Court of the United States. His statutory duties under 40 U.S.C. §13(f) include designation of certain employees of the Supreme Court as special policepersons for duty in connection with the policing of the Supreme Court Building and grounds. Defendant Wong has supervisory authority over marshals for the Supreme Court. He is sued in his official capacity.

6. Defendant Zagami is Captain of the Supreme Court Police and has supervisory authority over them. The Supreme Court Police enforce the provisions of 40 U.S.C. §13(k). Defendant Zagami is sued in his official capacity.

7. Defendant Derexhagen is a member of the United States Supreme Court Police, Badge Number 5. He was on duty on March 17, 1980, and directed plaintiff Grace to leave the grounds of the Supreme Court. He is sued in his official capacity.

8. The United States is a federal sovereign amenable to suit for equitable relief against federal officers acting in their official capacities pursuant to 28 U.S.C. §1331(a), as amended, (1976), and the theory of Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

NATURE OF ACTION

9. Plaintiffs are citizens who have been threatened with arrest and ordered to desist from exercising time-honored First Amendment rights on the outside grounds of the Supreme Court of the United States. Each plaintiff went to the Supreme Court by herself or himself and acted in a peaceful, orderly fashion. Neither plaintiff had any intent to interfere with ongoing judicial proceedings or to influence the court in regard to any given case. Indeed, Plaintiff Zywicki, a lone leafletter, in several instances, was distributing a handbill which had no

relation to any function of the Supreme Court, judicial or otherwise. Plaintiff Grace, alarmed that a statute could prohibit peaceful freedom of expression on the grounds of the Supreme Court stood with a sign near the newspaper vending machines on the sidewalk in front of the Supreme Court. Her sign contained a verbatim recital of the First Amendment to the United States Constitution. For that act she was ordered to leave Supreme Court grounds.

10. Plaintiffs seek declaratory and injunctive relief protecting the rights of plaintiffs and others similarly situated to exercise their First Amendment rights on Supreme Court grounds so long as said exercise is peaceful, orderly and otherwise lawful. Plaintiffs ask this court to permanently enjoin enforcement of 40 U.S.C. §13(k) and declare it unconstitutional both on its face and as it was applied to plaintiffs' conduct.

FACTUAL STATEMENT

11. Plaintiff Zywicki has gone to the Supreme Court on several occasions to express political views unrelated to the Court's pending docket and has been ordered to leave on threat of arrest on each occasion.

12. In May of 1978 plaintiff Zywicki went by himself to the Supreme Court grounds to distribute a leaflet which was a reprint of a letter to the Editor of The Washington Post from a United States Senator dealing with the subject of removal of unfit judges from the bench. See Plaintiffs' Exhibit 1, attached.

13. Plaintiff Zywicki handed out a few leaflets to passers-by on the sidewalk in front of the Supreme Court and near the coin-operated newsstand for the Washington Star. A Supreme

Court policeperson soon approached plaintiff and informed him that plaintiff would not be permitted to pass cut leaflets on Supreme Court grounds. The officer stated that Title 40 of the Federal Code prohibited plaintiff from leafletting on Supreme Court grounds which extended to the sidewalk. Plaintiff, fearing arrest, left the Supreme Court grounds and was deterred from returning.

14. On January 8, 1980, plaintiff Zywicki returned to the Supreme Court grounds with a handful of pamphlets containing an invitation to the recipient to attend several religious meetings and events concerning the political and human rights problems of Central America. See Plaintiff's Exhibit 2, attached.

15. Soon after arriving on Supreme Court property, a Supreme Court security officer apprcached plaintiff and stated that plaintiff was prohibited from passing out leaflets on Supreme Court grounds due to a law passed by Congress. Plaintiff asked the officer if he would be arrested if he continued leafletting. When the officer responded that plaintiff would be arrested, plaintiff, fearing arrest, ceased leafletting.

16. On February 4, 1980, plaintiff Zywicki again went to the Supreme Court grounds. Plaintiff had been informed by counsel that a Superior Court judge had narrowed the application of 40 U.S.C. §13(k) to conduct performed with the specific intent of influencing, impeding, or obstructing the administration of justice. Since plaintiff wanted to distribute leaflets concerning political and human oppression in Guatamala, counsel informed plaintiff that his conduct did not fall within the scope of 13(k) as narrowed by the Honorable Judge Joseph M. Hannon of the District of Columbia Superior Court. See Plaintiffs' Exhibit 3, attached, a partial transcript of the pro-

ceedings in United States v. Ebner, No. 12487-79, appeal pending, No. 80-165.

17. On February 4, 1980, plaintiff Zywicki distributed a few handbills, see Plaintiffs' Exhibit 4, attached, and was soon approached by a Supreme Court Police Officer who stated that plaintiff could not leaflet on Supreme Court grounds and would be subject to arrest if he continued to do so.

18. Plaintiff Zywicki stated that he understood the statute had been modified by the judge. The officer called inside the Supreme Court building with a walkie-talkie and eventually a Mr. White came out and stated that the statute had not been changed and that plaintiff was subject to arrest for leafletting on the sidewalk. At the time plaintiff was warned, the parties involved were standing near the Washington Post vending machine.

19. Plaintiff Zywicki informed the officers that he did not want to be arrested and would leave although plaintiff expressed a protest that the newspapers were allowed to be sold on Supreme Court grounds while plaintiff was denied the right to distribute printed matter of his choosing. Plaintiff also asked why it wasn't illegal under the statute to raise and lower the American flag on Supreme Court grounds.

20. Fearing arrest, plaintiff Zywicki has refrained from returning to the Supreme Court grounds to exercise his rights under the First Amendment.

* * * * *

21. On March 17, 1980, Mary Terese Grace arrived at the grounds of the Supreme Court a few minutes after noon. She unfolded a sign measuring approximately four feet by two and a half feet which stated the exact words of the First Amendment to the United States Constitution.

22. Plaintiff Grace stood in a peacable, orderly manner a few feet away from the Washington Post and Washington Star vending machines.

23. Plaintiff Grace had no intent to interfere with the business of the Supreme Court. Plaintiff did not know whether the Court was even in session. Her purpose was to communicate the message of the First Amendment in a public place peculiarly suited for such a message.

24. At approximately 12:15 p.m. a Supreme Court policeperson named John H. Derexhagen (Badge No. 5) came down the Supreme Court steps to where plaintiff was standing and ordered the plaintiff to go across the street. When plaintiff asked why she had to move, the officer stated that the law required it, mentioning 40 United States Code.

25. Plaintiff Grace asked the officer if he had read her sign, and if so, why she had to move. She stated she had just as much right to be there with her sign as the newsstands had a right to be there, the presence of each being protected by the First Amendment.

26. The officer replied that the law required that she move and that if plaintiff did not want to move she would have to come with the officer inside the building. Fearing arrest, plaintiff Grace decided to leave, taking down the officer's name and badge number.

27. Both plaintiffs are eager to exercise their First Amendment rights at the Supreme Court and both would return but for the spectre of arrest.

CAUSES OF ACTION

28. The proscriptions of 40 U.S.C. §13(k) are overbroad and vague in violation of the Fifth and First Amendments. The statute is unconstitutional on its face and it operates as a prior restraint.

29. The Congressional scheme of regulations pertaining to the Supreme Court is violative of the principles of the Due Process clause which guarantee equal protection of the laws in that processions and ceremonies are allowed when authorized under 40 U.S.C. §13(o), and the American flag is raised and lowered daily on Supreme Court grounds.

30. Application of 40 U.S.C. §13(k) to plaintiffs Grace and Zywicki denied them their First and Fifth Amendment rights and constituted a prior restraint upon their expression.

CLAIM FOR RELIEF

31. Plaintiffs Zywicki and Grace ask this Court to enter judgment pursuant to 28 U.S.C. §§2201 and 2202 and order relief enjoining defendants, their employees, agents, or persons acting on their behalf from enforcing 40 U.S.C. §13(k) in any manner against any person.

A. Plaintiffs ask the Court to enter a Declaratory Judgment:

1. That plaintiffs' right to engage in peaceful, orderly exercise of First Amendment rights on Supreme Court grounds is entitled to constitutional protection.

2. That the provisions of 40 U.S.C. §13(k) are unconstitutional on their face suffering from vagueness, overbreadth, and unnecessary abridgement of First Amendment freedoms.

3. That the provisions of 40 U.S.C. §13(k) are void as constituting a prior restraint on speech in violation of the First Amendment.

4. That allowing sale of newspapers on Supreme Court Grounds while denying plaintiffs the right to express their views denied plaintiffs due process of law in violation of the Fifth Amendment's guarantee of equal treatment under the law.

5. That plaintiffs are entitled to exercise their First Amendment rights on Supreme Court grounds as long as plaintiffs are orderly and do not obstruct passage nor destroy property.

6. That application of 40 U.S.C. §13(k) to plaintiffs in the above-mentioned instances was unconstitutional in violation of the First and Fifth Amendments.

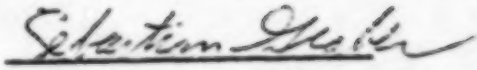
B. Plaintiffs ask this Court to enjoin defendants, their agents, employees and persons acting in their behalf from interfering with plaintiffs and others exercising their First Amendment rights to leaflet and stand with signs on the grounds of the Supreme Court so long as pedestrian and/or traffic flow is not blocked, property is not destroyed, the exercise of speech is peaceful and orderly, and the speech is not intended to influence the administration of justice with reference to any specific case pending before the Supreme Court.

C. Plaintiffs further ask this Court to enjoin defendants, their agents, employees or persons acting on their behalf from enforcing in any manner against any person the provisions of 40 U.S.C. §13(k) or any other law or regulation which is applied to prohibit activity akin to that involved in the instant case.

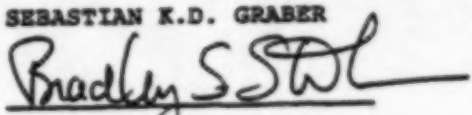
D. Plaintiffs further ask for costs for the prosecution of this lawsuit and reasonable attorneys' fees.

Respectfully submitted,

MARY TERESE GRACE
THADDEUS ŻYWICKI
Plaintiffs,
By Counsel



SEBASTIAN K.D. GRABER



BRADLEY S. STETLER

Counsel for Plaintiffs

GRABER, STETLER & TOWNSEND
101 North Columbus Street
Suite 409
Box 146
Alexandria, Virginia 22314
(703) 548-2110

VERIFICATION

We, the undersigned, verify under penalty of perjury that the foregoing Complaint, as well as the allegations of the Motion For a Preliminary Injunction are true and correct.

_____ _____

Date MARY TERESE GRACE

_____ _____

Date THADDEUS ZYWICKI

The Washington Post 11a

LETTERS TO THE EDITOR

MONDAY, MAY 1, 1978

On Removing Unfit Judges From the Federal Bench

For several years I have been an outspoken critic of the late U.S. District Judge Willis W. Ritter and of the system and tradition of American jurisprudence that effectively insulates a federal judge from all complaints and any discipline. Without surrendering the critical concept of an independent judiciary, we must establish a system that allows for impartial review and, when necessary, censure of a sitting federal judge. The Judicial Tenure Act, now pending in the Senate Judiciary Committee, provides a system of discipline within the Judicial Branch itself and it is urgently needed. The article by Clark Mollenhoff and Greg Rushford ["What Can be Done About Unfit Judges?; Only Four Have Ever Been Removed From the Federal Bench," Outlook, April 23] provided some helpful background material on the general problem, and the Ritter problem in particular.

A few months before Judge Ritter's death in March of this year, the Department of Justice and the State of Utah both petitioned the Judicial Council of the Tenth Circuit for an order barring Judge Ritter from taking any further action in any criminal or civil action in which they were a party. Those petitions were without precedent, and they were the culmination of nearly three decades of turmoil in the District Court for Utah. The petitions represented a non-partisan attempt to achieve a reasonable solution to a difficult situation in which few avenues of relief are available.

The problem with the proposed solution was that even if it had been granted it would have benefited those litigants who are best able to represent themselves in court. What about those litigants who do not have the resources of the Department of Justice or the State of Utah? Would they have been herded into Judge Ritter's court to fill the calendar dates opened when the Tenth Circuit granted the petitions of the United States and the state? If so, the individual litigant would have been appearing before a federal judge whom the Department of Justice had charged "conducts his business in a way that exceeds his authority and brings the federal courts into disrespect; neglects governing cases in the Tenth Circuit, has contempt for the judges of that court, and conducts his business in order to avoid appellate review of his decisions; and conducts the business of his court in a manner which has destroyed public confidence in his ability to administer justice" (*United States v. Ritter*, Petition for Writ of Mandamus or Prohibition).

I supported the filing of the writs because they were a significant and too-long delayed step toward equal justice, but the availability of this potential remedy is not adequate to the task of judicial discipline. As a cosponsor of the Judicial Tenure Act, I trust that it will be adequate.

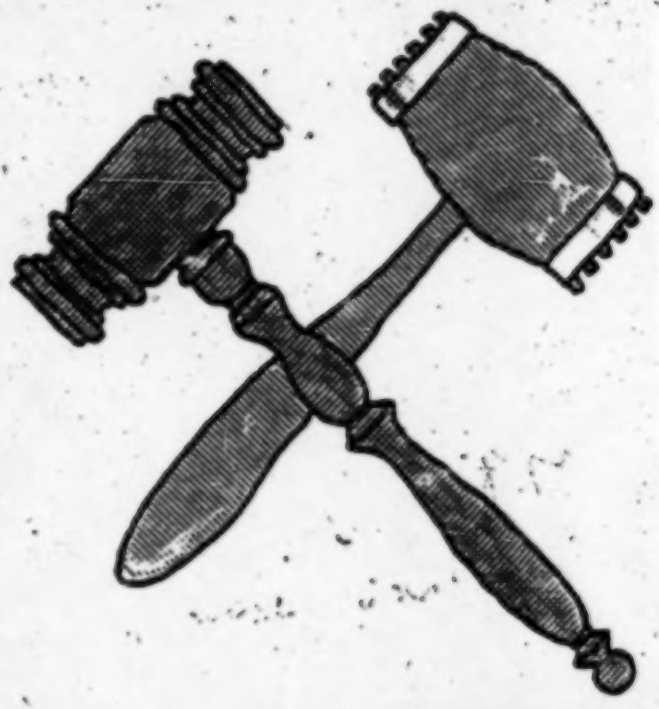
In 1821 Thomas Jefferson wrote, regarding the adoption of the Bill of Rights, that an 11th amendment should have been proposed and that, in failing to do so, the new nation had sown the seeds of its destruction. Said Jefferson:

"But there was another amendment, of which none of us thought at the time, and in the omission of which, lurks the germ that is to destroy this happy combination of National powers in the General government, for matters of National concern, and independent powers in the States, for what concerns the States severally. . . . [A]nd, in the General government in this instance, we have gone even beyond the English caution, by requiring a vote of two-thirds, in one of the Houses, for removing a Judge; a vote so impossible, where any defence is made, before men of ordinary prejudices and passions, that our Judges are effectually independent of the nation. But this ought not to be. I would not, indeed, make them dependent on the Executive authority, as they formerly were in England; but I deem it indispensable to the continuance of this government, that they should be submitted to some practical and impartial control. . . ."

The Judicial Tenure Act provides that "practical and impartial" control that Jefferson hoped to see adopted. Once again, it would be prudent to follow his advice.

JAKE GARN,
U.S. Senator (R-Utah).

Washington



By Barbe Kaufmann for The Washington Post

Exhibit #1

The Washington Post

LETTERS TO THE EDITOR

MONDAY, MAY 1, 1978

On Removing Unfit Judges From the Federal Bench

For several years I have been an outspoken critic of the late U.S. District Judge Willis W. Ritter and of the system and tradition of American jurisprudence that effectively insulates a federal judge from all complaints and any discipline. Without surrendering the critical concept of an independent judiciary, we must establish a system that allows for impartial review and, when necessary, censure of a sitting federal judge. The Judicial Tenure Act, now pending in the Senate Judiciary Committee, provides a system of discipline within the Judicial Branch itself and it is urgently needed. The article by Clark Mollenhoff and Greg Rushford ["What Can be Done About Unfit Judges?; Only Four Have Ever Been Removed From the Federal Bench," Outlook, April 23] provided some helpful background material on the general problem, and the Ritter problem in particular.

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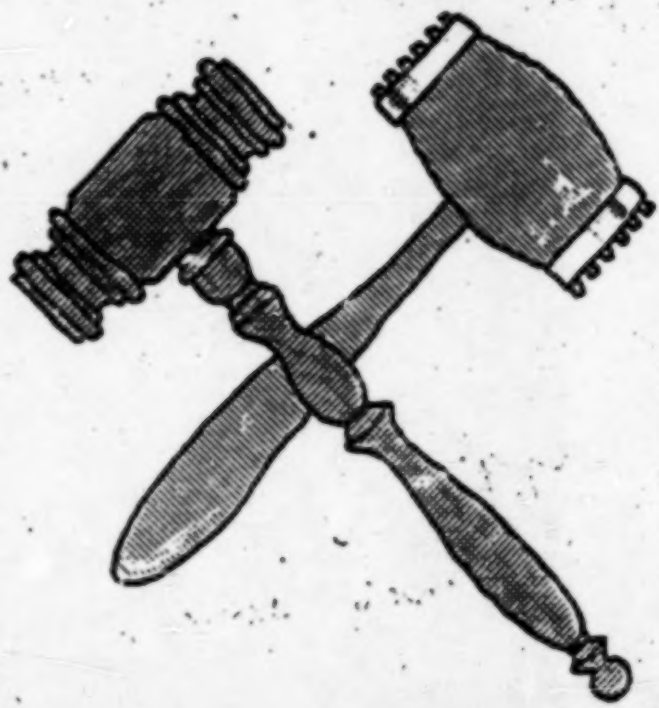
JAKE GARN,
U.S. Senator (R-Utah).

Washington



By Jackie Kaufmann for The Washington Post

Exhibit #1

YOU ARE INVITED TO

A RELIGIOUS REFLECTION IN SOLIDARITY WITH OPPRESSED PEOPLES OF CENTRAL AMERICA

CHRISTIANS AROUND THE WORLD ARE JOINING IN PRAYER AND FASTING IN RESPONSE TO THE CALL OF THE CHURCHES OF CENTRAL AMERICA.

THIS IS PART OF AN INTERNATIONAL DAY OF CONCERN AND SUPPORT FOR OUR SUFFERING SISTERS AND BROTHERS.

- CAPILLA LATINA
2200 CALIFORNIA N.W.
SUNDAY
JANUARY 13, 1980
AT
1:30 P.M.

- AN ECUMENICAL SERVICE WITH SONGS AND MESSAGES FROM CHRISTIANS IN GUATEMALA, NICARAGUA, EL SALVADOR, HONDURAS.

OTHER WEEKEND SOLIDARITY EVENTS:

SATURDAY, JANUARY 12TH
7:30 P.M. -

"GUATEMALA SOLIDARITY NIGHT"

ST. STEPHEN'S CHURCH, 16TH AND NEWTON ST. N.W. -
FOR MORE INFORMATION CALL 232-4467

SUNDAY, JANUARY 13TH
7:30 P.M.

"LATIN AMERICAN SOLIDARITY NIGHT"

ALL SOULS' CHURCH
16TH AND COLUMBIA ROAD N.W.

FOR MORE INFORMATION CALL 667-0417 -

Exhibit #2

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	
v.	:	
GERALD EBNER,	:	Docket No. 12487-79
WILLIAM R. DURLAND,	:	Docket No. 12490-79
EDWARD B. CASSIDY,	:	Docket No. 12491-79
WILLIAM J. HARTMAN,	:	Docket No. 12493-79
MICHAEL SILVER, and	:	Docket No. 12494-79
MARY BIRCH,	:	Docket No. 12496-79
Defendants.	:	

Washington, D. C.

Tuesday, January 22, 1980

The above-entitled cause came on for hearing before the Honorable JOSEPH M. HANNON, Associate Judge, in Courtroom No. 12, 500 Indiana Avenue, Northwest, commencing at approximately 2:03 o'clock p. m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

ROBERT CORNELL, Esquire
Assistant United States Attorney

On behalf of the Defendants:

BRADLEY STETLER, Esquire
101 North Columbus Street
Alexandria, Virginia 22314

[redacted]

Exhibit #3

if Your Honor is going to put a narrowing construction, I would just as soon that you do the simple thing, and strike the second phrase as opposed to putting an intentional thing --

THE COURT: Don't I have a responsibility as a Judge to preserve the constitutionality of the statute if I can do so consistent with the rule of law?

MR. STETLER: You do, Your Honor. If you placed with specific intent in there, Your Honor, would that strike the second phrase too?

THE COURT: We'll find out, sir.

MR. STETLER: All right. I have nothing further.

THE COURT: This matter is before the Court on a motion to dismiss a number of criminal actions which have been lodged against the defendants, Mary Birch, William Durland, William Hartman, Michael Silver, Edward Cassidy and Gerald Ebner, and more specifically, to dismiss the charge which has been lodged against these defendants charging them with unlawful parading on the United States Supreme Court grounds on November 23, 1979, and also with displaying an unlawful device upon the Supreme Court grounds on the same date.

No challenge is made by these defendants to the third charge which has been lodged against them charging

them with unlawful entry. The Court has --

MR. STETLER: May I interrupt you a second?

THE COURT: No, not until I finish, please, sir.

The defendants urge that this statute, which is found at 40 United States Code, 13(k), is facially unconstitutional, and in addition, is being unconstitutionally applied to them with respect to the conduct they engaged in on November 23, 1979.

The Court has decreed that the challenge to the application, to the so-called unconstitutional application of the statute must be held in abeyance until such time as these cases come to trial before the Court.

It seems to the Court that only after the Government has put in its case-in-chief demonstrating through witnesses testifying under oath can this Court make a judgment respecting how the United States as sovereign is applying the statute to these defendants, and so the ruling by the Court that the motion challenging the unconstitutional application of the statute to these defendants is denied, is denied without prejudice to it being reasserted at the end of the Government's case-in-chief.

The Court turns now to the second challenge made by these defendants that 40 U. S. Code, 13(k) is unconstitutional on its face, an issue that is troublesome and that has required great thought and study by the Court

in its determination regarding the appropriate ruling respecting the constitutionality of the statute.

The Court has listened to the eloquent and scholarly argument of Mr. Stetler made on behalf of these defendants and expresses its appreciation to Mr. Stetler for the quality of the argument together with a memorandum filed in support of the position that the statute is unconstitutional on its face.

A mere reading of the statute alone would appear to substantiate the challenge of unconstitutionality, but the Court is troubled, and taking the statute in two parts and dealing with Part 1 first, the statute recites, it shall be unlawful to parade, stand, or move in processions or assemblies in the Supreme Court Building or grounds.

The Court has carefully considered this portion of the statute in an attempt to conceive of a type of activity that could be engaged in by more than three or four people which would be protected conduct if it occurred on the Supreme Court grounds.

What is it that a group who might parade or stand in assemblies or move in processions, what is it that such a group might do upon the Supreme Court grounds that could be considered to be protected activity, and Mr. Stetler has urged that this would include a group of tourists or a group of newsmen and the Court finds that

not persuasive because statutes are to be construed and applied with common sense, and no right-thinking person would apply this statute to a group of newsmen or a group of tourists, both of whom clearly are invited to the Supreme Court grounds, the tourists on one hand to see and experience American jurisprudence in action, and the newsmen to acquire news for news media distribution.

Since it is difficult to conceive of any activity that a group could engage in that would be protected, it seems then that implicit in this first part of the statute is the following language, to wit, that it shall be unlawful for persons to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds with the intent to disrupt, intefere with, or impede the administration of justice, or with the intent of influencing the administration of justice.

This Court is satisfied that that language is implicit in the first part of the statute, albeit not expressly stated, and so the Court construes the first portion of the statute to include that type of intentional activity to engage in this conduct with the intent to disrupt or interfere with or impede the administration of justice or with the intent of influencing the administration of justice.

It may be that the Court of Appeals here in the

District of Columbia may conclude that the language is not implicit in the statute in which event the Court alternatively states that that language is not implicit, that language is now to be construed as including that type of an intent within its meaning.

The Court now turns to the even more difficult portion of the statute which is directed to one person or more than one person as distinguished from the first portion of the statute which is directed to group activity.

The second portion of the statute makes it unlawful to display on the Capitol grounds or in the Supreme Court Building any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. Clearly, that language is overly broad and can encompass within it totally innocent activity, and once again, the Court is not of the view that the Congress of the United States even back in 1890 ever intended to prohibit merely this type of activity, and so this Court construes, the second portion of the statute, to include within it the language which it has applied alternatively to the first portion of the statute, and so this Court now construes, the second portion of the statute, to make it unlawful to display on the Supreme Court grounds or in the Supreme Court Building, any flag, banner, or device designed or adapted to bring into public notice any party,

organization, or movement if done with the intent to disrupt, interfere with, or impede the administration of justice, or with the intent of influencing the administration of justice.

The statute as construed by this Court is not facially unconstitutional. The motion of these defendants to dismiss the charges lodged against them under the statute as construed by the Court is denied.

Now, Mr. Stetler.

MR. STETLER: Well, in light of Your Honor's ruling, I'll withdraw that comment. However, just for purposes of getting the language straight, would we have a written opinion on this, or could we have a written opinion?

THE COURT: You can order it from the --

MR. STETLER: That's fine. It will probably go up anyhow.

THE COURT: Is the Government ordering a copy of the Court's ruling, Mr. Cornell? To my knowledge, this is the first time any Judge of this Court has construed the statute in such a fashion as I have. If memory and research serve, it appears that Judge Hess of this Court at an earlier time entered a ruling saying that the statute was not facially unconstitutional. Whether he gave any reasons for his ruling, I cannot say. If he did, I have not been able to uncover what the reasons were.

In any event, irrespective of what Judge Hess might have said, this Court's ruling stands as the rule of law to be applied in these cases.

MR. STETLER: Thank you on behalf of the defendants, Your Honor.

THE COURT: Thank you again, Mr. Stetler. I hope I wasn't too curt with you on the issue of unconstitutional application versus facially unconstitutional. There is a substantial difference, and with all due deference, I think I'm right although the day may come when you may prove them wrong.

Thank you very much.

MR. STETLER: I wish I had read Rankin a little closer.

THE COURT: All right. There are others. Why don't you take a look at Quaker Actions sometime and see whose name is on that.

MR. STETLER: I'll do that.

THE DEPUTY CLERK: Your Honor, the same ruling in all cases?

THE COURT: Same ruling in all cases.

THE DEPUTY CLERK: Thank you, Your Honor.

(Whereupon at 3:03 o'clock p. m. the proceedings in the above-entitled cause were concluded.)

o-o-o-o-o

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REPORTER'S CERTIFICATE

I, John F. Hrozencik, an official reporter of the Superior Court of the District of Columbia, do hereby certify that I reported by stenomask, in my official capacity, the proceedings had and testimony adduced, upon the trial in the case of UNITED STATES OF AMERICA versus GERALD EBNER, Docket No. 12487-79, WILLIAM R. DURLAND, Docket No. 12490-79, EDWARD B. CASSIDY, Docket No. 12491-79, WILLIAM J. HARTMAN, Docket No. 12493-79, MICHAEL SILVER, Docket No. 12494-79, and MARY BIRCH, Docket No. 12496-79, heard in said court on January 22, 1980.

I further testify that the foregoing forty-two pages constitute the official transcript of the proceedings as taken from my oral recording.

In witness whereof I have hereunto subscribed my name this 24th day of January 1980.

Official Reporter

RECEIVED
JAN 25 PM '80
CLERK OF SUPERIOR COURT

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARY T. GRACE, et al.,	:	
Appellants,	:	
v.	:	No. 80-2044
WARREN E. BURGER, et al.,	:	
Appellees.	:	

MOTION FOR THE COURT TO TAKE JUDICIAL NOTICE OR IN THE ALTERNATIVE TO SUPPLEMENT THE RECORD

Appellant plaintiff Grace respectfully moves the Court to take judicial notice of an article and photograph which appeared in The Washington Star, C1, C3, January 6, 1981 under which is a caption which reads: "Despite the chilly weather, a film crew sets up cameras on the steps of the Supreme Court to shoot a scene in 'First Monday in October.'" See Appellant's Exhibit A, attached hereto (original filed with the Court). In the alternative, appellant Grace asks the Court to order that the record be supplemented and that the article and photograph be admitted into the record, or, in the alternative, to mark the article and photograph for identification and hear agrument on its admissibility at oral argument of the case on May 27, 1981.

As grounds for this motion, appellant states as follows:

1. Publication of the article and photograph occurred while this case was pending in this Court.

2. The article and photograph depict an assemblage of persons on the steps of the Supreme Court apparently gathered for

the purpose of shooting a scene for a commercial film.

3. Appellee argued extensively in the brief for the government that a primary purpose of 40 U.S.C. §13k is to assure "the peace and dignity of the Supreme Court..." Brief for Appellee at 11.

4. The photograph is extremely relevant and supportive of appellants' selective enforcement argument and the fact that lone leafletting or lone signholding is not disruptive when compared to other assemblies on the Supreme Court grounds which occur regularly and are allowed by appellees defendants.

5. The photograph is objective evidence that 40 U.S.C. §13k is not "applied uniformly to personal conduct" as appellees argue. Brief for Appellees at 13.

6. The government cannot argue prejudice because it is their conduct which has created any prejudice, to wit: allowing a film Supreme Court steps but disallowing appellants from engaging in their activity. Appellees have thus allowed one form of expressive activity but denied another.

7. The tremendous difficulty of assembling proof of appellants' selective enforcement arguments mitigates in favor of admitting into the record the article and photograph, prepared and published by an objective source independent of all parties.

8. Rule 201(b) of the Federal Rules of Evidence provides that judicial notice may be taken of a fact:

> not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

The photograph and article provide ample basis under Rule 201(b) for the Court to take judicial notice of the fact that on or about January 5, 1981, an assemblage of persons was allowed to gather on the Supreme Court grounds for purposes of shooting a scene in a movie, "First Monday in October."

9. Rule 201(b) is applicable to this Court under Rules 101 and 201(c), Federal Rules of Evidence.

WHEREFORE, the appellant moves this Court to either:

1. Take judicial notice of the fact that on or about January 5, 1981, an assemblage of persons was allowed to gather on the steps of the United States Supreme Court for purposes of shooting a scene in a commercial film, as depicted in a photograph printed in The Washington Star, C1, January 6, 1981, or in the alternative;

2. Supplement the record with orginal copies of The Washington Star, C1, January 6, 1981, to be made a part of the record in this case. Appellant-plaintiff suggests that government counsel be allowed to make any objections at the hearing scheduled for May 27, 1981, or to submit the government's views in writing shortly thereafter.

Respectfully submitted,

MARY GRACE
THADDEUS ZYWICKI

Sebastian K.D. Graber/BS

SEBASTIAN K.D. GRABER
Counsel for appellant
GRABER, STETLER & TOWNSEND
1019 King Street
P.O. Box 146
Alexandria, Virginia 22314
(703) 548-2110

The Washington Star

Comi

hington life

TUESDAY JANUARY 6, 1981

A series or shopping malls begir tomorrow i the Fashior section.

ıe New Majority

rity Leader Howard Baker.

ian for The Washington Star

Chandler, chairman

By Lois Romano
Washington Star Staff Writer

Sen. Howard Baker, R-Tenn., the new Senate Majority Leader, was guest of honor last night at an elegant, and rather large, party held at the Corcoran Gallery of Art. But he wasn't the main attraction.

With appropriate fanfare — bright lights, an army of Secret Service, and a traveling entourage — President-elect Ronald Reagan stopped by briefly to pay tribute to the man he coolly eliminated as competition during the Republican primaries last year. He also appeared to be paying his respects to the host of the party, the Times Mirror Co., which publishes the most powerful newspaper in his home state, the Los Angeles Times.

"I will be departing in a few minutes," Reagan joked the second he walked in the door, "because not only did I not wear a black-tie, but I wore a brown suit."

The real reason for Reagan's quick exit, however, was not the brown wool gabardine suit, but the long, tiring flight from Mexico, where the president-elect had spent the day meeting with Mexican President Lopez Portillo.

Reagan dismissed his trip quickly saying it was "friendly" and the basis of establishing good relations with our Southern neighbors. And on to Howard.

"I know this is more of a non-partisan tribute for all the good things Howard has done while in the Senate," said Reagan. "But I'd like to be partisan for a minute. Howard is not only great as the leader of our party, but because he did more than any one human being could do for the election of others. And that's why he's majority leader right now, and not minority leader."

Baker, visibly tickled by Reagan's appearance, thanked the president-elect for himself and his wife, Joy, and called his rise to majority leader (Republicans are in the majority in the Senate this year for the first time since 1953) "the highest point in our political lives."

"I'm absolutely delighted in being in the majority," smiled Baker. "But

Washington Star Rosemary Morrell

Despite the chilly weather, a film crew sets up cameras on the steps of the Supreme Court to shoot a scene in "First Monday in October."

Filming 'October' In January

for The Washington Post

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And that's wh[illegible] ajority leader right now, and no[illegible]inority leader."

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"I'm absolutely delighted in being in the majority," smiled Baker. "But before I spent all my time criticizing the Democrat's policies; now I'm spending all my time scratching and fighting to get the Cabinet nominees confirmed."

In addition to being the highlight of their political life, the event was also the bright spot of her month. Mrs. Baker has spent the past three weeks in the hospital for treatment of an ulcer condition and left for only a few hours yesterday for the senator's swearing in and the party. "That's my doctor right over there," she said proudly. "It was the only way they would let me come, and I wouldn't have missed this for anything."

Partisan differences seemed to be forgotten, at least for the night, as some 400 senators, congressmen, Carter administration officials and Cabinet secretary-designates filed into the stately Corcoran Gallery, where tables were set up in the main foyer.

Some even joked about their new status, or non-status.

"What are you going to do now?" Baker asked Carter press secretary Jody Powell.

"Well, I got a couple of very good offers to lay aluminum siding, but I haven't decided which one to take yet," said Powell wryly.

"You're doing just fine," said Baker sympathetically. "Gosh, just to survive all this."

Cavalier about his fate was former Carter campaign chieftain Bob Strauss. "Sometimes you gotta play the hand they deal you," he drawled. Strauss' hand won't be too bad as he rejoins his lucrative Dallas-based law firm, which also has a Washington office.

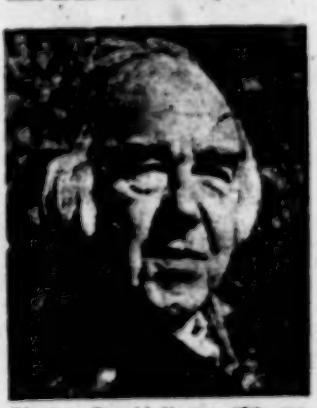
But despite a smattering of Democrats here and there, the night clearly belonged to the Republicans who hours earlier took over the U.S. Senate.

See BAKER, C-4

Despite the chilly [illegible]er, a film crew sets up cameras on the steps of the Supreme Court [illegible]oot a scene in "First Monday in October."

Actress Jill Clayburgh has her hair brushed as she braves the cold.

Actor Walter Matthau plays patty-cake in an effort to keep warm.



Director Ronald Neame: "It's supposed to be a nice sunny day."

Filming 'October' In January

By Pat Dowell
Washington Star Movie Writer

"It's cold. We know it's cold. But it's not supposed to be cold. It's supposed to be a nice sunny day," Ronald Neame mutters to one of the film crew.

On this first Monday in January — a blazingly bright, frigid morning — director Neame and his stars, Walter Matthau and Jill Clayburgh, and a couple dozen technicians who look like they're outfitted for Everest, are scaling the steps of the Supreme Court, shooting the last scene of the movie "First Monday in October."

They were here in October, when the weather was right, to film this adaptation of Jerome Lawrence and Robert E. Lee's play about the first woman Supreme Court justice. But Clayburgh's miscarriage brought a halt to the location shooting. They're back for a few days this week to shoot exteriors with the stars around the court and the Smithsonian.

The weather has added some complications. Matthau and Clayburgh are freezing to death in their autumn clothes. Clayburgh wears moonboots from the trailer to the set and then changes over into leather ankle boots, while an assistant stands by with a parka to put over her coat.

Matthau wears a rumpled (of course) sweater, with a muffler wrapped around his head, like a babushka, under his hat. He keeps dancing and sparring in place to keep warm. All they're trying to do is get out of a cab on First Street and walk up the steps to the main entrance.

They filmed the conversation inside the cab earlier this morning, riding around the block with the cab on a trailer being hauled by a pickup truck. The Panaflex camera was strapped to the hood and Neame

See ACTORS, C-3

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David Hemming as Dr. Jekyll, left, and as Edward Hyde, right.

to Sylvester the Cat (an animated adaptation) — is really irrelevant.

Each new drama is shaped and colored by its adapter (in this case Gerald Savory), its director (Alastair Reid) and its star (David Hemmings), who has his own method of becoming a monster, his own diabolic combination of virtuousness and malevolence.

Savory's "Dr. J & H" is heavily, though discreetly, into S & M. Dr Jekyll's hang-up is a need for punishment — "Well, who's been a naughty boy, then?" whines one of his whores, fondling a whip. Mr. Hyde's sensuality is a lot more confident and, one would gather, sinister. "You take off all your clothes," he commands an under-

See DEVILISHLY, C-2

Actors Brave First Monday In January

Continued From C-1

spent most of his time under a large, homemade, plywood shade peering into the car's interior.

Neame, a 69-year-old Briton transplanted to Hollywood, started out as a camera operator on Alfred Hitchcock's first talkie, "Blackmail," in 1928. "Hitchcock was the boy wonder of 1928," Neame remembers, "and even then he was fat."

He worked as cinematographer with the great talents of British film-making — Michael Powell, David Lean, Anthony Asquith, among others — and became a producer for Lean on such films as "Brief Encounter" and "Great Expectations." He directed his first film in 1947, hitting his stride in the late '50s with a wonderfully acerbic adaptation of Joyce Cary's "The Horse's Mouth" and the taut military confrontations of "Tunes of Glory," both with Alec Guinness.

In 1972 he directed "The Poseidon Adventure," and that picture's success typed his work. Sitting in his director's chair on the Supreme Court steps, his wispy grey hair blowing in the 20-degree breeze, Neame gets a look of distaste. "I hated big action pictures. After 'Poseidon' everybody said it was big action pictures for Neame." He says with some relief in his voice, "But now I'm back with what I like. Action is fine. But characters are better."

"First Monday," like Neame's most recent film, "Hopscotch," combines sophisticated comedy with a topical theme — in this case, one that seems less farfetched than when the play opened at the Kennedy Center in 1977 and on Broadway the next year.

Clayburgh's character is a conservative judge who clashes with the "Great Dissenter," a flaming civil liberties champion during her 42 years in the movies? "One senses things," she says, "but it's not one's job to ask questions."

The cold eventually drives her away from the location, along with just about everyone else who can find a shelter and an excuse to use it. That includes Matthau, who spends the indoors moments between shots in one of the big trailers parked

Bracing the cold during the shooting of "First Monday in October," crew members prepare to shoot a scene that involved pulling a cab through the streets on a dolly.

Washington Star Bureau's Marvin

Matthau has no ambitions to direct. "It's too much work. You have to be so damn definite about everything. I might be that developed in about 3- to 4,000 years."

He is, however, something of a writer. "I wrote 80 percent of 'Hopscotch.' Eighty percent of the good stuff, that is. My wife (Carol Marcus), who's a writer, says I'm

[illegible] and "Great Expectations." He debuted his first film in 1947, hitting his stride in the late '50s with a wonderfully acerbic adaptation of Joyce Cary's "The Horse's Mouth" and the taut military comedy-frustrations of "Tunes of Glory," both with Alec Guinness.

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Clayburgh's character is a conservative judge who clashes with the "Great Dissenter," a flaming civil liberties champion played by Matthau. With Ronald Reagan's election promise to appoint a woman justice to the present court, the only part of the story "that seems implausible now is the presence of an unreconstructed liberal.

In Washington and New York the leads were played by Henry Fonda and Jane Alexander. When the movie was cast, Fonda had another commitment, a film with his daughter Jane and Katharine Hepburn called "On Golden Pond," but Alexander lost the part, according to producer Barry Heller, because Clayburgh is "a much more visible star."

"At the box," someone else adds helpfully. "It's a matter of recognition," Heller says. "She's a better investment." He thinks the teaming of Matthau and Clayburgh can be likened to Hepburn and Tracy.

Heller's partner in actress Martha Scott, who's been producing plays for about 11 years. An energetic, mink-clad figure on the set, she says this is her first film production. "It's all new to me," she claims. Surely she must have picked up a few pointers during her 42 years in the movies? "One knows things," she says, "but it's not one's job to ask questions."

The cold eventually drives her away from the location, along with just about everyone else who can find a shelter and an excuse to use it. That includes Matthau, who spends the tedious moments between shots in one of the big trailers parked along Maryland Avenue, which the police have cordoned off for today's shoot.

"Henry Fonda is the best all-round American actor we have," he says with a smile. He's slouched comfortably at a table in his purring "honey wagon," kept running to provide heat. "I went to see him and asked him, 'Do you mind if I play your part?' 'Go ahead,' he said, 'you ought to do it justice.'"

Matthau is as distinctive and versatile an actor as the movies have now. That familiar, almost casually stealthy, hunched gait of his is one of film's most impressive comic accomplishments.

"That's a natural thing. It's presence," he shrugs. "It's either interesting or it's not. You can't work on it, or make it happen. In a movie a director can make you interesting, but presence is presence. It's like something Jill's character says in the movie about being a woman. It's like absolute pitch. You either have a vagina or you don't. There's no way you can buy one."

Unlike many high-paid actors these days, Matthau has no ambitions to direct. "It's too much work. You have to be so damn definite about everything. I might be that developed in about 3- to 4,000 years."

He is, however, something of a writer. "I wrote 60 percent of 'Hopscotch.' Eighty percent of the good stuff, that is. My wife (Carol Marcus), who's a writer, says I'm really a writer. She says I'm an emotional miser, just like writers are."

On the set, however, he has a reputation for friendliness and generosity. Everybody seems to find him a lovable guy, from the local actress, Wendy Taylor, who eagerly reports he got her an extra line of dialogue in her part as a taxi driver, to the director, Neame, who originally suggested Matthau for the part. The publicist loves him because he'll talk to the press and Jill Clayburgh won't.

Clayburgh doesn't like to be bothered while she works, someone on the crew elaborates, and she seems to be suffering from the cold, problems with her hair, a reluctance to have still pictures taken in judicial robes on the steps. By the time the shooting was finished yesterday, she was beginning to feel ill.

Filmmaking has never been easy, and on the first Monday in January it's tougher than ever. Tomorrow they have to figure out how to keep the simulated rainfall at the Smithsonian from freezing up.

Washington Star Photo by Harry Naltchayan

Braving the cold during the shooting of "First Monday in October," crew members prepare to shoot a scene that involved pulling a cab through the streets on a dolly.

Actress Martha Scott, co-producer of "First Monday in October"

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-2044

September Term, 19 80

Civil Action No. 80-01205

ARGUED: 5-27-81

Mary Terese Grace
Thaddeus Zywicki,
Appellants

v.

Warren E. Burger, Chief
Justice of the United States
Supreme Court, et al.

BEFORE: MacKinnon, Edwards and Ginsburg; Circuit Judges

O R D E R

On consideration of the motion of appellant Grace for the Court to take Judicial Notice or in the alternative to supplement the record, it is

ORDERED by the Court that the motion for the Court to take Judicial Notice is granted.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER, Clerk

BY: Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 18 1981

GEORGE A. FISHER
CLERK

§§ 2 to 5. Omitted.

CODIFICATION

Sections 2 to 5, acts Feb. 26, 1925, ch. 339, §§ 1–4, 43 Stat. 981; July 3, 1930, ch. 848, 46 Stat. 907; 1933 Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, ch. 38, § 1, 48 Stat. 380, related to the abolition of the commission in charge of the State, War, and Navy Department Buildings and of the Office of Public Buildings and Grounds; to the establishment of the Office of Public Buildings and Public Parks of the National Capital; and to the transfer of officers, employees, functions, records, etc., of the abolished agencies to that agency.

The Office of Public Buildings and Public Parks of the National Capital was abolished, and its functions were transferred to the National Park Service, by Ex. Ord. No. 6166, § 2, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

The functions of the National Park Service in the District of Columbia in connection with general assignment of space, etc., were transferred to the Public Buildings Administration in the Federal Works Agency by 1939 Reorg. Plan No. I, §§ 201, 303, eff. July 1, 1939, 4 F. R. 2729, 53 Stat. 1426, 1427, set out in the Appendix to Title 5.

For abolishment of the Federal Works Agency and the Public Buildings Administration, and transfer of functions thereof, see section 793 of this title.

§ 5a. Repealed. Oct. 31, 1951, ch. 654, § 1 (73), 65 Stat. 704.

Section, act July 19, 1932, ch. 510, 47 Stat. 706, which related to employment of landscape architects, architects, engineers, artists, etc., in connection with public buildings in the National Capital, is now covered by section 734 of this title.

§ 6. Laws not affected by creation of Office of Public Buildings and Public Parks of National Capital.

CODIFICATION

Section, act Feb. 26, 1925, ch. 339, § 6, 43 Stat. 984, related to the Office of Public Buildings and Public Parks of the National Capital, which was abolished by Ex. Ord. No. 6166, § 2, eff. June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

§ 7. Repealed. Oct. 31, 1951, ch. 654, § 1 (74), 65 Stat. 704.

Section, act July 8, 1916, ch. 139, § 1, 40 Stat. 831, which related to distribution of building employees among various government office buildings, is now covered by section 736 of this title.

§ 7a. Repealed. June 30, 1948, ch. 758, title I, § 103 (b), 62 Stat. 1068, eff. July 1, 1949.

Section, acts June 28, 1940, ch. 448, title I, § 101, 57 Stat. 179; June 27, 1944, ch. 288, title I, § 101, 58 Stat. 287; May 3, 1945, ch. 106, title I, § 101, 59 Stat. 112; Mar. 29, 1946, ch. 113, title I, § 101, 60 Stat. 63, related to appointment of personnel by the former Commissioner of Public Buildings. The Office of Commissioner of Public Buildings was abolished by act June 30, 1949, ch. 288, title I, § 103(b), 63 Stat. 380, effective July 1, 1949. The provisions are now covered by section 758 of this title.

§§ 8 to 13. Repealed. Oct. 31, 1951, ch. 654, § 1 (75)—(80), 65 Stat. 704.

Section 8, R. S. § 1798, related to expenditures of appropriations made for repairs and improvements of public buildings and grounds in the District of Columbia.

Sections 9–13 related to the care and supervision of a number of specified office buildings in the District of Columbia. They were derived from the following acts:

Section 9—Mar. 3, 1883, ch. 128, § 1, 22 Stat. 588.

Section 10—May 22, 1900, ch. 586, § 1, 31 Stat. 210; Mar. 28, 1918, ch. 39, § 1, 40 Stat. 483; June 4, 1918, ch. 92, 40 Stat. 598.

Section 11—Mar. 28, 1918, ch. 38, § 1, 40 Stat. 480; June 4, 1918, ch. 92, 40 Stat. 598.

Section 12—May 24, 1922, ch. 199, 42 Stat. 554.

Section 13—Feb. 13, 1929, ch. 73, 45 Stat. 1250.

§ 13a. United States Supreme Court Building; structural and mechanical care; care and maintenance of grounds.

The Architect of the Capitol shall have charge of the structural and mechanical care of the United States Supreme Court Building, including the care and maintenance of the grounds, and the supplying of all mechanical furnishings and mechanical equipment for the building. The operation and maintenance of the mechanical equipment and repair of the building shall be performed under his direction and he is authorized to enter into all necessary contracts. (May 7, 1934, ch. 222, § 1, 48 Stat. 668.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13b of this title.

§ 13b. Same; structural, mechanical, and grounds employees.

Employees required for the performance of the provisions of section 13a of this title shall be (a) appointed by the Architect of the Capitol with the approval of the Chief Justice of the United States; (b) compensated in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5; and (c) be subject to the provisions of the Act entitled "An Act for the retirement of employees in the classified civil service, and for other purposes," approved May 22, 1920, as amended. (May 7, 1934, ch. 222, § 2, 48 Stat. 668; Oct. 28, 1949, ch. 782, title XI, § 1106 (a), 63 Stat. 972.)

REFERENCES IN TEXT

The Act entitled "An Act for the retirement of employees in the classified civil service, and for other purposes," approved May 22, 1920, as amended, referred to in text, was repealed by Pub. L. 89–504, § 8(a), Sept. 6, 1966, 80 Stat. 644, and is now covered by section 8301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "the Classification Act of 1949" for "the Classification Act of 1923", which for purposes of codification has been translated as "chapter 51 and subchapter III of chapter 53 of title 5."

§ 13c. Same; domestic care and custody; superintendent.

All other duties and work required for the operation, domestic care, and custody of the building shall be performed under the direction of the Marshal of the Supreme Court of the United States, who shall be superintendent of the United States Supreme Court Building. (May 7, 1934, ch. 222, § 3, 48 Stat. 668; June 25, 1948, ch. 646, § 27, 62 Stat. 990.)

AMENDMENTS

1948—Act June 25, 1948, omitted provision relating to custodia, employees as it is now covered by section 672 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 36 of act June 25, 1948, provided that the amendment of this section shall be effective as of Sept. 1, 1948.

§ 13d. Repealed. June 25, 1948, ch. 646, § 29, 62 Stat. 992, eff. Sept. 1, 1948.

Section, act May 7, 1934, ch. 222, § 4, 48 Stat. 668, related to disbursement of appropriations by the marshal, and is now covered by section 672 of Title 28, Judiciary and Judicial Procedure.

§ 13e. Care and maintenance of Oliver Wendell Holmes Garden.

After the completion and dedication of the Oliver Wendell Holmes Garden, it shall be maintained and cared for by the Architect of the Capitol in accordance with the provisions of law applicable with respect to the maintenance and care of the grounds of the United States Supreme Court Building. (Oct. 22, 1940, ch. 909, § 6, 54 Stat. 1208.)

Cross References

Maintenance and care of Supreme Court Building, see sections 13a—13c of this title and section 672 of Title 28, Judiciary and Judicial Procedure.

§ 13f. Supreme Court Building and grounds; policing; designation of special policemen.

The Marshal of the Supreme Court of the United States, under the general supervision and direction of the Chief Justice of the United States, may designate employees of the Supreme Court as special policemen, without additional compensation, for duty in connection with the policing of the Supreme Court Building and grounds and adjacent streets. (Aug. 18, 1949, ch. 479, § 1, 63 Stat. 616.)

Section Referred to in Other Sections

This section is referred to in sections 13n, 13p of this title.

§ 13g. Same; restriction of public travel.

Public travel in and occupancy of the Supreme Court grounds is restricted to the sidewalks and other paved surfaces. (Aug. 18, 1949, ch. 479, § 2, 63 Stat. 616.)

Section Referred to in Other Sections

This section is referred to in sections 13f, 13m, 13n, 13o, 13p of this title.

§ 13h. Same; sale of articles; signs; solicitation.

It shall be unlawful to offer or expose any article for sale in the Supreme Court Building or grounds; to display any sign, placard, or other form of advertisement therein; or to solicit fares, alms, subscriptions, or contributions therein. (Aug. 18, 1949, ch. 479, § 3, 63 Stat. 616.)

Section Referred to in Other Sections

This section is referred to in sections 13f, 13m, 13n, 13o, 13p of this title.

§ 13i. Same; injuries to property.

It shall be unlawful to step or climb upon, remove, or in any way injure any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf in the Supreme Court Building or grounds. (Aug. 18, 1949, ch. 479, § 4, 63 Stat. 617.)

Section Referred to in Other Sections

This section is referred to in sections 13f, 13m, 13n, 13o, 13p of this title.

§ 13j. Same; firearms or fireworks; speeches; objectionable language.

It shall be unlawful to discharge any firearm, firework or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language in the Supreme Court Building or grounds. (Aug. 18, 1949, ch. 479, § 5, 63 Stat. 617.)

Section Referred to in Other Sections

This section is referred to in sections 13f, 13m, 13n, 13o, 13p of this title.

§ 13k. Same; parades or assemblages; display of flags.

It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. (Aug. 18, 1949, ch. 479, § 6, 63 Stat. 617.)

Section Referred to in Other Sections

This section is referred to in sections 13f, 13m, 13n, 13o, 13p of this title.

§ 13l. Same; rules and regulations; publication; effective date.

(a) In addition to the restrictions and requirements specified in sections 13g to 13k of this title, the Marshal of the Supreme Court may prescribe such regulations, approved by the Chief Justice of the United States, as may be deemed necessary for the adequate protection of the Supreme Court Building and grounds and of persons and property therein, and for the maintenance of suitable order and decorum within the Supreme Court Building and grounds.

(b) All regulations promulgated under the authority of this section shall be printed in one or more of the daily newspapers published in the District of Columbia, and shall not become effective until the expiration of ten days after the date of such publication. (Aug. 18, 1949, ch. 479, § 7, 63 Stat. 617.)

Section Referred to in Other Sections

This section is referred to in sections 13m, 13n, 13p of this title.

§ 13m. Same; penalties.

Whoever violates any provision of sections 13g to 13k of this title, or of any regulation prescribed under section 13l of this title, shall be fined not more than $100 or imprisoned not more than sixty days, or both, prosecution for such offenses to be had in the Superior Court of the District of Columbia, upon information by the United States Attorney or any of his assistants: *Provided*, That in any case where, in the commission of any such offense, public property is damaged in an amount exceeding $100, the period of imprisonment for the offense may be not more than five years. (Aug. 18, 1949, ch. 479, § 8, 63 Stat. 617; July 29, 1970, Pub. L. 91-385, title I, § 155(a)(3), 84 Stat. 870.)

Change of Name

"Municipal Court for the District of Columbia" was changed to "Superior Court of the District of Columbia" pursuant to Pub. L. 91-358, which provides that such change is effective the first day of the seventh calendar month which begins after July 29, 1970.

Section Referred to in Other Sections

This section is referred to in section 13p of this title.

§ 13n. Same; jurisdiction and powers of special police and Metropolitan Police force.

The special police provided for in section 13f of this title shall have the power, within the Supreme Court Building and grounds and adjacent streets, to enforce and make arrests for violations of any provision of sections 13g to 13k of this title, or

any regulation prescribed under section 13*l* of this title, or of any law of the United States or of any State or any regulation promulgated pursuant thereto: *Provided*, That the Metropolitan Police force of the District of Columbia are authorized to make arrests within the Supreme Court Building and grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Marshal of the Supreme Court or his assistants, to enter the Supreme Court Building to make arrests in response to complaints or to serve warrants or to patrol the Supreme Court Building or grounds. (Aug. 18, 1949, ch. 479, § 9, 63 Stat. 617.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13p of this title.

§ 13o. Same; suspension of prohibitions against use of grounds.

In order to permit the observance of authorized ceremonies within the Supreme Court Building and grounds, the Marshal of the Supreme Court of the United States may suspend for such occasions so much of the prohibitions contained in sections 13g to 13k of this title, as may be necessary for the occasion, but only if responsible officers shall have been appointed, and arrangements determined which are adequate, in the judgment of the Marshal, for the maintenance of suitable order and decorum in the proceedings, and for the protection of the Supreme Court Building and grounds and of persons and property therein. (Aug. 18, 1949, ch. 479, § 10, 63 Stat. 617.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13p of this title.

§ 13p. Same; area of grounds.

For the purposes of sections 13*l* to 13p of this title the Supreme Court grounds shall be held to extend to the line of the face of the east curb of First Street Northeast, between Maryland Avenue Northeast and East Capitol Street; to the line of the face of the south curb of Maryland Avenue Northeast, between First Street Northeast and Second Street Northeast; to the line of the face of the west curb of Second Street Northeast, between Maryland Avenue Northeast and East Capitol Street; and to the line of the face of the north curb of East Capitol Street between First Street Northeast and Second Street Northeast. (Aug. 18, 1949, ch. 479, § 11, 63 Stat. 617.)

§ 14. Repealed. Oct. 31, 1951, ch. 654, § 1 (80), 65 Stat. 704.

Section, act Feb. 15, 1933, ch. 72, 47 Stat. 1239, related to care, maintenance, etc., of Department of Commerce buildings.

§ 14a. Care, maintenance, etc., of Bureau of Standards building.

The responsibility for the care, maintenance, and protection of the buildings occupied by the Bureau of Standards of the Department of Commerce in the District of Columbia and the disbursement of the funds appropriated therefor, together with all the machinery, tools, equipment, and supplies used or for use, in connection therewith, shall be transferred on July 1, 1936, from the office of Public Buildings and Public Parks of the National Capital to the Secretary of Commerce. (Apr. 29, 1926, ch. 195, title III, 44 Stat. 256.)

TRANSFER OF FUNCTIONS

The Office of Public Buildings and Public Parks of the National Capital was abolished, and its functions transferred to the Office of National Parks, Buildings and Reservations in the Department of the Interior, by section 2 of Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees. The latter office was designated the National Park Service by act Mar. 2, 1934, ch. 38, § 1, 48 Stat. 389, see section 1 of Title 16, Conservation, and notes thereunder.

EXCEPTIONS AS TO TRANSFER OF FUNCTIONS

Functions with respect to the operation, maintenance, and custody of the buildings occupied by the National Bureau of Standards were excepted from the transfer of functions made by 1950 Reorg. Plan No. 18, § 2, eff. July 1, 1950, 15 F. R. 3177, 64 Stat. 1270, set out as a note under section 490 of this title.

§§ 15 to 18. Repealed. Oct. 31, 1951, ch. 654, § 1 (80), (81), 65 Stat. 704.

Sections related to the care, maintenance, etc., of a number of specified office buildings in the District of Columbia. They were derived from the following acts:

Section 15—Feb. 13, 1923, ch. 72, 42 Stat. 1239.
Section 16—Apr. 4, 1930, ch. 96, title I, 46 Stat. 68.
Section 17—Feb. 13, 1923, ch. 72, 42 Stat. 1240.
Section 18—Feb. 13, 1923, ch. 72, 42 Stat. 1240.

§ 18a. Repealed. May 27, 1939, ch. 141, 46 Stat. 394.

Section, act Mar. 4, 1939, ch. 707, § 1, 45 Stat. 1628, related to the care, maintenance, etc., of Mount Weather, Virginia.

§ 19. Supervision of public buildings and grounds in District of Columbia not otherwise provided for by law; eviction of trespassers.

The Administrator of General Services shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President, except those buildings and grounds which are otherwise provided for by law; and when it shall be made to appear to the said Administrator of General Services, or to the officer under his direction having immediate charge of said public buildings and grounds, that any person or persons is in unlawful occupation of any portion of said public lands in the District of Columbia, it shall be the duty of said officer in charge thereof to notify the marshal of the District of Columbia in writing of such unlawful occupation, and the said marshal shall thereupon cause the said trespasser or trespassers to be ejected from said lands, and shall restore possession of the same to the officer charged by law with the custody thereof. (R.S. § 1797; Apr. 28, 1902, ch. 594, § 1, 32 Stat. 153.)

DERIVATION

Acts Aug. 4, 1854, ch. 243, § 15, 10 Stat. 573; Mar. 2, 1867, ch. 167, § 2, 14 Stat. 466; Feb. 14, 1874, ch. 22, 18 Stat. 14.

CODIFICATION

R.S. § 1797, as amended by act Apr. 28, 1902, gave the charge of public buildings and grounds in the District of Columbia to the Chief of Engineers. The former contained only the provision that the Chief of Engineers should have charge of public buildings and grounds and ended with the words, "otherwise provided for by law." The amendatory act of 1902 added the provisions beginning with the words, "and when it shall be made to appear," etc., to the end of the section.

U. S. MERCHANT MARINE ACADEMY—GRADUATES—DEGREE OF BACHELOR OF SCIENCE

For text of Act see p. 638

Senate Report No. 797, July 28, 1949 [To accompany H. R. 242]

House Report No. 949, June 29, 1949 [To accompany H. R. 242]

The Senate Report repeats in substance the House Report.

Senate Report No. 797

THE Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 242) to provide for the conferring of the degree of bachelor of science upon graduates of the United States Merchant Marine Academy, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This bill amends the act of May 25, 1933, as amended by Public Law 705, Seventy-ninth Congress (60 Stat. 968), which provided for the conferring of the degree of bachelor of science upon graduates of the Naval, Military, Coast Guard, and Merchant Marine Academies. The latter act provided that such degrees would be conferred on and after the date that the Merchant Marine Academy was accredited by the Association of American Universities. This association, however, has withdrawn from the field of accreditation; and, in view of the fact that it is the only association specifically named in the law to grant accreditation before degrees may be conferred, no degrees may now be conferred.

This bill merely removes from existing law any reference to the Association of American Universities; if enacted, accreditation will be made by some other official accreditation organization.

The bill is approved by the United States Maritime Commission and the Bureau of the Budget and will result in no cost to the Government.

UNITED STATES SUPREME COURT—BUILDING AND GROUNDS—POLICING

For text of Act see p. 630

Senate Report No. 719, July 18, 1949 [To accompany H. R. 4948]

House Report No. ———, ———, 1949 [To accompany H. R. 4948]

The Senate Report repeats in substance the House Report.

Senate Report No. 719

THE Committee on the Judiciary, to whom was referred the bill (H. R. 4948) relating to the policing of the building and grounds of the Supreme Court of the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

LEGISLATIVE HISTORY

PURPOSE

The purpose of this bill is to provide positive statutory authority for the policing of the Supreme Court Building and grounds, defining the exact territorial limits thereof, authorizing the appointment of special police, and defining their duties and powers.

STATEMENT

The Supreme Court has occupied its present building, and the grounds adjacent thereto, since the year 1935. Continuously, since said date, the building and grounds have been policed by the building guards, commissioned as special policemen who received their authority from the Government of the District of Columbia. Until quite recently, no question was raised as to the authority of the District Commissioners to so provide the authority for said special guards or policemen. Less than a year ago, said authority of the Commissioners was questioned and they concluded that, effective December 31, 1948, they should cancel all special police commissions, including the ones for the guards for the Supreme Court Building. Since it was impracticable to pass legislation prior to December 31, 1948, which would give special authority to the Supreme Court Building guards, the District commissioners have fully cooperated by extending the authority of the special policemen now assigned to the Supreme Court Building until November 1, 1949. The law is not clear as to what authority, if any, the District Commissioners can give to the guards assigned to the Supreme Court Building, and as long as any possible question exists as to such authority. Congress should act to make the authority of such guards positive and unquestionable.

Accordingly, this bill was introduced in the Senate and a companion bill (H. R. 4948) was introduced in the House of Representatives.

This bill is patterned very largely after the law which authorized special guards to police the Capitol grounds.

The exact territorial limits to which the provisions of this bill apply is clearly defined in the bill as the building and adjacent property extending to the curb line on the streets which bound it. Various acts, such as sale of goods in the building, display of advertising, soliciting alms, injury to the building or grounds, discharging of firearms, making speeches, parading or picketing, are prohibited or regulated by the bill. The Marshal of the Supreme Court is authorized to restrict and regulate travel and occupancy of the building and adjacent grounds and to prescribe rules and regulations for the protection of said premises and the maintenance of order and decorum. The bill further authorizes the appointment of, and designation of, certain employees to be special policemen and defines their exact authority. It is not anticipated that any additional expense will be incurred by reason of provisions of this bill, and the sole and only purpose of the bill is to make a clear and positive statement in the law

of the authority which said employees have exercised over the period of the past 13 years.

CONCLUSION

In keeping with the dignity which should surround the Supreme Court of the United States and the building and grounds which house it, the committee feel that this legislation should be enacted promptly.

FISH HATCHERIES, REARING PONDS, ETC.—ESTABLISHMENT, REHABILITATION AND EXPANSION

For text of Act see p. 629

Senate Report No. 679, July 14, 1949 [To accompany H. R. 2740]

House Report No. 686, May 26, 1949 [To accompany H. R. 2740]

The Senate Report repeats in substance the House Report.

Senate Report No. 679

THE Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 2740) to establish rearing ponds and a fish hatchery at or near Millen, Ga., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

PURPOSE OF THE BILL

The bill (H. R. 2740) as herewith amended is a combination of five bills dealing with the establishment of fish hatcheries and providing for certain studies of fish resources, all heretofore passed by the House of Representatives. The five bills referred to are:

1. H. R. 2740, which would authorize the construction of rearing ponds and a fish hatchery near Millen, Ga., at an approximate cost of $250,000;

2. H. R. 961, which would authorize construction of rearing ponds and a fish hatchery in the Upper Peninsula of Michigan, at an approximate cost of $325,000;

3. H. R. 3046, which would authorize expansion of facilities at the fish cultural station at Cape Vincent, N. Y., at an approximate cost of $70,000;

4. H. R. 2501, which would authorize a six-year study by the Fish and Wildlife Service of the depletion of the shad along the Atlantic coast at a cost of $75,000 per year (the Senate companion bill S. 1094, by Senator O'Conor, was indefinitely postponed);

5. H. J. Res. 202, which would broaden the investigation of means of eradicating the predatory sea lamprey in the Great Lakes at an estimated cost of $359,000 for the first year and $216,000 per annum thereafter for probably six additional years;

6. Also included in the bill is a Senate amendment authorizing

§ 1506. Theft or alteration of record or process; false bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 770.

Library references: Obstructing Justice ⇐1, 21; C.J.S. Obstructing Justice §§ 12, 22.

Historical and Revision Notes

Revisor's Note. Based on Title 18 U.S.C., 1940 ed., § 233 (Mar. 4, 1909, c. 321, § 127, 35 Stat. 1111 [derived from R.S. § 5394]).

The term of imprisonment was reduced from 7 to 5 years, to conform the punishment with like ones for similar offenses. (See section 1503 of this title.)

Minor changes were made in phraseology. 80th Congress House Report No. 304.

Cross References

Concealment, removal or destruction of records, see section 2071 of this title.
Embezzlement or theft of records, generally, see section 641 of this title.

§ 1507. Picketing or parading

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt. Added Sept. 23, 1950, c. 1024, Title I, § 31(a), 64 Stat. 1018.

Library references
Obstructing Justice ⇐6, 21.
C.J.S. Obstructing Justice §§ 7, 11, 22.

Legislative History: For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S.Code Cong.Service, p. 2086.

§ 1508. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting

Whoever knowingly and willfully, by any means or device whatsoever—

(a) records, or attemp
grand or petit jury in an
jury is deliberating or vot

(b) listens to or observ
the proceedings of any g
a member in any court o
deliberating or voting—

shall be fined not m
than one year, or both

Nothing in paragraph (a)
prohibit the taking of notes by
the United States in connecti
assisting him in the performa
Aug. 2, 1956, c. 879, § 1, 70 Stat

Library references: Obstructing
§§ 7, 11, 22.

Hist

Legislative History: For legislative
tory and purpose of Act Aug. 7, 1956,

§ 1509. Obstruction of

Whoever, by threats or for
pedes, or interferes with, or w
impede, or interfere with, the
formance of duties under any
of the United States, shall be fi
not more than one year, or both

No injunctive or other civil
inal by this section shall be de
is a crime. Added Pub.L. 86-
Stat. 86.

Library references: Obstructing J
§§ 7, 11, 22.

Hist

Legislative History: For legislative
tory and purpose of Pub.L. 86-189,

Appendix D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY T. GRACE, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 80-1205
WARREN E. BURGER, et al.,	)	
Defendants.	)	

DECLARATION OF ALFRED WONG

I Alfred Wong, Marshal of the Supreme Court of the United States declare under penalty of perjury as follows:

1. I am the Marshal of the Supreme Court of the United States and as such I am responsible for law enforcement policy on the grounds of the Supreme Court. This responsibility includes enforcement of 40 U.S.C. § 13(k).

2. 40 U.S.C. § 13(k) is enforced uniformly on the grounds of the Supreme Court of the United States.

3. When any person on the grounds of the Supreme Court of the United States engages in expressive conduct, including carrying a sign, passing out leaflets or participating in a demonstration, that person is notified by a law enforcement officer that the conduct is in violation of 40 U.S.C. § 13(k) and advised that unless they cease the conduct or leave the grounds of the Supreme Court of the United States they will be arrested. The person is then given a reasonable time to desist his or her conduct or leave the grounds. Those who do not cease their conduct or leave the grounds are arrested.

4. 40 U.S.C. § 13 (k) is enforced uniformly without regard to message of the expressive conduct.

Executed this 27 day of May, 1980

ALFRED WONG
Marshal of the Supreme Court

DEFENDANT'S EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MARY T. GRACE, et al.,
Plaintiffs,
vs.
WARREN E. BURGER, et al.,
Defendants.

CA 80-1205

Washington, D.C.
Wednesday, June 11, 1980

The above-entitled matter came on for hearing before the Honorable LOUIS J. OBERDORFER, United States District Judge, commencing at apporximately 2:00 p.m.

APPEARANCES:

On behalf of the Plaintiffs:

SEBASTIAN GRABER, ESQ.
BRADLEY STETLER, ESQ.

On behalf of the Defendants:

CRAIG LAWRENCE, ESQ.
ROYCE LAMBERTH, ESQ.

SYLVIA SEYMOUR
OFFICIAL COURT REPORTER

in now.

THE COURT: Do you know whether there are any interpretive regulations or --

MR. STETLER: We have the Supreme Court Police Training Manual.

THE COURT: Is that in the record?

MR. STETLER: That is not in the record. The only applicable regulation in that is the regulation that prohibits all leafleting on the Supreme Court grounds.

THE COURT: Is leafleting defined?

MR. STETLER: No, it is not.

If Your Honor will indulge me. On Page 22 and Page 23 of the Supreme Court of the United States Police Training Division Manual, promulgated by the Police Board in September of 72 --

THE COURT: Promulgated by who?

MR. STETLER: The S.C.U.S. Police Board.

THE COURT: Supreme Court Police Board?

MR. STETLER: Yes.

THE COURT: Consisting of whom?

MR. STETLER: Well, listed on the title page are Frank Hepler, Marshall, and Vernon W. Kobel, Captain.

Under Item #10; under Passes, Permits and Authorization it states -- and I quote:

"Distribution of literature. Distribution of

leaflets, handbills, throwaways or other literature on the buildings or grounds is not permitted. The distribution of such material beyond the premises is the concern of local police authority."

To the extent that this manual --

THE COURT: That is a public document.

MR. STETLER: Well, it is not a public document. In fact, we had quite a hassel trying to get hold of this. The way we got it was, we are taking one of the cases up on appeal and as an agreement with the prosecutor in that case, they said that they would allow us to look through the Police Training Manual. But we did not have public access to it.

I can tender this -- it is my only copy -- to the Court.

THE COURT: Why don't you make -- is there objection to receipt of that in the record?

MR. LAWRENCE: No, Your Honor.

THE COURT: Why don't you tender it now? Withdraw it and make a copy, and file a copy with the record as Plaintiff's Exhibit A.

MR. STETLER: I will do that.

THE COURT: Was this represented to you as the current --

MR. STETLER: I had a conference with the United

States Attorney, Susan Holms. She allowed me to review the manual in full and I xeroxed the pages that I thought were relevant. She didn't say -- I don't remember her saying that it was current, although she just got it recently -- I know that -- from the Supreme Court Police.

MR. LAWRENCE: Your Honor, if I may, we will make a determination on whether that is the current manual, and notify the Court.

THE COURT: Thank you.

MR. STETLER: More specifically; in addition to the statute, we feel that the question presented to Your Honor is whether or not the United States Government can, in effect, hang a tapestry of silence around the Supreme Court by prohibiting lone leafleting and lone sideholding unrelated to any function of the Supreme Court and not designed to influence or disrupt the Supreme Court function; and whether they can enforce such a statute against such activity when the statute is an overly broad, not a narrowly drawn regulatory statute as was upheld in Cox.

THE COURT: Suppose the statute were amended so that the words "building" or "grounds" were deleted, and in their place was "courtroom".

MR. STETLER: We feel that that would be an appropriate -- that our clients would not have to hold signs in the hallway and the courtroom.

Now, I think that the proper standards that have to be applied here are whether or not the statute is rational or irrational. We are dealing here, Your Honor, with a statute that, on it's face, restricts speech. There is no question about that.

THE COURT: What do you do with a hypothetical of the courtroom?

MR. GRABER: In a courtroom?

THE COURT: Yes.

MR. GRABER: In a courtroom there should not be picketing or leafleting.

THE COURT: All right. Or in the courthouse?

MR. GRABER: In the courthouse there should not be leafleting or picketing.

THE COURT: Who is to define the courthouse more narrowly than that relatively small area occupied by the Supreme Court? I do take judicial notice of the general lay-out of that building on that site.

MR. GRABER: All right. I think that on the sidewalk, when you are in an area of the steps, and below, on the sidewalk there to the street, that area is beyond the government's legitimate authority to control in this kind of balancing view.

THE COURT: And Congress disagrees with you.

MR. GRABER: Yes. But, Your Honor, Congress is

bound, as we all are bound, by the Constitution.

THE COURT: Yes, I am sure they enacted this and I am sure they were conscious of their oath to protect and defend the Constitution. Those people up there operate under Constitutions just as you and I do.

MR. GRABER: I understand that, but it will not be the first or the last time that Congress has overstepped it's bounds.

THE COURT: In this particular situation, the Congress has drawn a finite line, very precisely. How are you going to begin to say it is wrong, much less me?

MR. GRABER: Well, Your Honor, I mean, somebody who has read constitutional cases -- the constitutional debates -- and I have devoted a considerable amount of my time to the First Amendment study --

THE COURT: Do they talk about the relationship between the Judiciary and the sanctuary it requires to perform it's functions as distinguished from the function of the Legislature and the Executive to receive impulses from the public through all sorts of transmissions? The First Amendment has a limited application to the right of appeal to communication with the court. We impinge on your First Amendment rights when we say in order to start a case you have to file a complaint. You don't start a case by carrying a sign through here.

MR. STETLER: Well, freedom of speech is different than access to a court.

THE COURT: That's right. And in controlling access to a court, you affect speech. I would think that most devoted defenders of the First Amendment -- I'd like to include myself in that company -- recognizes the need to draw a line.

MR. GRABER: But, Your Honor, we are not dealing here with speech directed towards a judiciary function.

THE COURT: That's right.

MR. GRABER: You tell me, Your Honor, what elevates the Judiciary above the Congressional or Executive branch.

THE COURT: Not above. It has a different function.

MR. GRABER: But it is above. If the First Amendment has no application to the block of the Supreme Court, but it does to the block of the Capitol, and it does to the block of the White House, what makes the Supreme Court, the highest branch of government --

THE COURT: It doesn't say it is the highest. It has a different function. Congress doesn't guarantee the right to assemble and petition the Supreme Court.

MR. GRABER: I know.

THE COURT: The Constitution guarantees the right to assemble and petition the Congress. And this court or the court of appeals have held that the White House is a

special place for the purpose of exercising First Amendment privileges.

The Supreme Court is created by Article III, to decide cases. And Congress, in it's wisdom, instead of having the Supreme Court as it originally was, inside of the Capitol, moved it across the street. Congress, historically, is very much aware of the Supreme Court. It used to be it's landlord.

MR. GRABER: I understand, Your Honor, but the standard in this case, since we are dealing with a free speech issue, the burden has to be on the government to show compelling state interest.

From what Your Honor is saying, I hear you implying that the compelling state interest is the judicial function, but I would submit that the legislative function is as compelling an interest as the judicial function. And Jeanette Rankin has held that the Capitol was a proper place for speech activities, and the Supreme Court affirmed.

THE COURT: I am not quarrelling with the Jeanette Rankin Case or with Quaker Action as they relate to the Legislative or Executive branch. But I am saying that you don't petition the Supreme Court by marching and leafleting.

MR. GRABER: Nobody was petitioning the Supreme Court. People were exercising their free speech rights, at a place that happened to be the Supreme Court.

THE COURT: If you concede to me -- as you must -- the courtroom is a place that can be walled off from that sort of activity, you have to concede that a line has to be drawn somewhere. And as long as free speech is not impeded -- in the ultimate sense, that is -- instead of leafleting on that sidewalk you can walk across the street and leaflet -- and that regulation that you read me recognizes that right -- there is not an unbalanced interference with the First Amendment on the face of the statute.

MR. GRABER: But, Your Honor, to me there is a profound difference between exercise of any activity in a courtroom that is not in conjunction with the court proceedings; when we are outside the courthouse we are dealing with a completely different factual situation, and I don't think a line can be drawn.

THE COURT: I hear you, but I am more interested in alleged discrimination.

MR. GRABER: Your Honor, I'd also like to ask the Court how the Washington Post and Washington Star have --

THE COURT: They are not here, are they?

MR. GRABER: Pardon me?

THE COURT: They are not here?

MR. GRABER: But there is no conflict of fact about it.

THE COURT: Are you basing your claim of

discrimination on the presence of their vending machines on that sidewalk?

MR. GRABER: Yes, Your Honor. One aspect; because we say what gives the Post and the Star the monopoly on wisdom and dissemination of their particular point of view?

THE COURT: I don't want a stump speech. I need to know whether I have to decide from your papers, in a summary judgment mode, whether this statute is discriminatorily administered, in your view, to the point of violating the First Amendment because there are Washington Post vending stands there.

MR. GRABER: It is not only that.

THE COURT: Is there any other item of discrimination that you are asserting on the record?

MR. GRABER: Well, Your Honor, we would like to leave that aspect open to develop it in discovery and possibly amend the complaint.

THE COURT: So you are not now pressing for summary judgment on a discrimination issue?

MR. GRABER: Except that I feel there is enough in the record with the Post and Star presence alone, because we are dealing there with printed information and printed opinion.

THE COURT: All right.

MR. GRABER: But our clients aren't allowed to disseminate their printed opinions. And I don't see the

difference, except for the fact that our clients are people who would be passing out their printed matter, as opposed to just a machine.

Now, if the Supreme Court will set up a vending machine for our clients to disseminate their information, to put their leaflets in there, then that might give the government a stronger footing. But it seems to me that there is no presumption of constitutionality for any statute that restricts speech. The Supreme Court has said that time and time again. There is no presumption of legitimacy, and, in fact, the government must show compelling state interest to justify the statute.

THE COURT: The government, having shown a compelling state interest, then what is your burden? I am of a view, subject to being persuaded differently, that the environment and the presence of the Supreme Court is an area in which there is a compelling state interest in the use of that property, primarily, if not exclusively, for ingress and egress of persons having business before the court or to use the facilities, and that the Congress could rationally determine that persuading the public about matters before the court or not before the court by these otherwise quite legitimate devices can be prohibited in that perimeter.

You have to persuade me differently, and you haven't so far.

MR. GRABER: It appears not.

THE COURT: All right. Do you have anything more? I will let you answer the government. Anything else that you want to bring to my attention at this time?

MR. GRABER: Not at this time. Only that we would be very interested in a mini-complaint and conducting discovery according to the lines of discrimination, in terms of application of the statute.

THE COURT: Sure. I will hear you in response to the government and we will consider all that.

Mr. Lawrence?

MR. LAWRENCE: I am Craig Lawrence and I appear on behalf of the United States, as well as all the other defendants. Service is completed and I now appear on behalf of all those individuals who have been named as defendents.

I would like to address, briefly, before getting to the substance, the procedural questions with regard to amending the complaint and getting into discovery.

THE COURT: Let's see where we are now. Do you agree that we are here on cross motions for summary judgment.

MR. LAWRENCE: That is correct.

THE COURT: And on a motion for preliminary injunction?

MR. LAWRENCE: That is correct, Your Honor.

THE COURT: To which you have responded.

MR. LAWRENCE: Yes, Your Honor. Both parties have moved for summary judgment. I think one of the issues of the complaint is that the only issue they have disputed with regard to the application of the statute here is that it is unequally applied to personal conduct and to the vending machines. That is the only disputed fact. On that basis, there is nothing in the complaint and there is nothing in the disputed facts which raises discriminatory enforcement of the statute, except insofar as it applies to vending machines, and not the vending machines and personal conduct.

THE COURT: What would you say the Washington Post would say if you threw them off the corner?

MR. LAWRENCE: That is a difficult question. But I think, in terms of Broadrick against Oklahoma, that is one that we really do not have to reach.

THE COURT: What does Broadrick say on that?

MR. LAWRENCE: Basically, it requires a focus on the issues which have been presented factually to the court, rather than getting into a lot of different --

THE COURT: They do, on the record, bring my attention -- I don't know whether it is in an evidentiary way -- to the presence of a vending machine.

MR. LAWRENCE: Your Honor, we don't dispute the fact that there are vending machines on the sidewalk.

THE COURT: So, to that extent they have raised the

question of discrimination, if that is discrimination.

MR. LAWRENCE: Assuming that is discrimination; Your Honor, in point of fact, a reading of the statute does not apply to machines, but rather to personal conduct. And that is the focus.

THE COURT: The definition says:

"to display any device designed or adapted to bring into public notice any organization."

MR. LAWRENCE: Yes, Your Honor.

THE COURT: On that vending machine there must be a sign that says Washington Post.

MR. LAWRENCE: And Washington Star, Your Honor.

THE COURT: Isn't that a device designed and adapted to bringing the public notice to an organization?

MR. LAWRENCE: Your Honor, I think that a statute -- at least as it applies -- is designed to deal with conduct of persons. If, for example, a person was holding --

THE COURT: Where does it say that?

MR. LAWRENCE: One moment, Your Honor.

THE COURT: It says:

"It shall be unlawful to display therein" -- meaning in the Supreme Court building or grounds -- "any device designed or adapted to bring into public notice any organization."

That literally embraces the Washington Post, doesn't

it, and the Star?

MR. LAWRENCE: I think, reading in conjunction with the first part, it embraces personal conduct:

"It shall be unlawful to parade, stand and move in processions, et cetera."

THE COURT: That part. And then there is an "or".

MR. LAWRENCE: "Or to display therein." I read those in conjunction with another one.

THE COURT: You don't read "or" as "or"?

MR. LAWRENCE: I do read it as "or", but it is designed with a person -- "unlawful not only for a person to parade, but it is also unlawful for a person to display."

THE COURT: It doesn't say person; and a corporation is a person.

MR. LAWRENCE: That is true, Your Honor. But it says an individual rather than a corporate person. And on that basis --

THE COURT: Who said that? "It shall be unlawful to display."

MR. LAWRENCE: We obviously part company on the interpretation.

THE COURT: We can part company, but you are going off the cliff. I don't want you to do that.

"It shall be unlawful to display." How do you get that to be --

MR. LAWRENCE: By reading the statute as a whole. And its basic intent, I think if we look --

THE COURT: Forty U.S.C.

MR. LAWRENCE: Forty; yes, Your Honor.

THE COURT: The whole being what?

MR. LAWRENCE: I'm talking simply about that section. But if we are dealing with -- as I read it, with personal conduct of an individual on the grounds, rather than a vending machine, I think we would have a difficult situation had plaintiffs set their vending machine --

THE COURT: They are giving their thing.

MR. LAWRENCE: That is true. But if they set up simply a stand and left their articles there, I think we are in a different context.

THE COURT: You are not saying that -- you are not representing the police would permit that, are you?

MR. LAWRENCE: Your Honor, I don't know how the police would react to it.

THE COURT: Isn't that a problem? They did have a regulation that says what a policeman would do in that circumstance. If you were a policeman, what would you do?

MR. LAWRENCE: Your Honor, it is a difficult question. I think that brings us back to my point with Broadrick To compare the newspaper vending machines we would have to have a situation where a device was left with a stack of

pamphlets on the adjacent corner to the newspaper vending machines.

THE COURT: How do you get that out of the statute? As a matter of practice, they have allowed the Washington Post to have a machine there. The statute doesn't say that, does it?

MR. LAWRENCE: Well, Your Honor, when Congress addresses a situation like that, I don't believe that they can get into obviously all the minute permutations and combinations, and I would be frankly quite surprised whether Congress considered directly the fact of newspaper vending machines one way or the other.

But I think here the real question, as far as discriminatory enforcement, would be comparing a vending machine to another machine which provided free copies of pamphlets and not a vending machine to personal conduct.

On that basis, we believe that the statute is uniformly applied to personal conduct. And on that basis, I think from that complaint, from plaintiff's complaint, we don't have a question of any uniform enforcement against other persons, because that is not part of their complaint, and they don't dispute the fact, except as to machines.

THE COURT: Mr. Lawrence, I hear you. That machine didn't walk there, it got there by somebody's personal conduct. An agent of the Washington Post put it there. Why

isn't his putting it there unlawful? He is displaying a device. Not if he did it at night.

MR. LAWRENCE: Well, Your Honor, again --

THE COURT: That person has violated this statute, hasn't he, as it is written?

MR. LAWRENCE: It may very well be, Your Honor.

THE COURT: How could it not be?

MR. LAWRENCE: I am not sure, Your Honor. I don't know how it could not be.

THE COURT: Why don't we go on to something else?

MR. LAWRENCE: In any event, I think that aspect of their statement of genuine issues points up the fact that that is the only area of unequal application that is involved in this case.

THE COURT: Let me ask you this. If your clients, having been alerted by this complaint to the possible disparity between the treatment accorded these plaintiffs and the Washington Post, should decide to remove the Washington Post, or ask the Washington Post to remove it's stands to across the street, would that not cure the case, so far as the need for equitable relief is concerned?

MR. LAWRENCE: Assuming that would be determined to be a defect, that would be one manner in which the unequal application could be cured.

And I think, as to any other problems or allegations

the officers enforcing the statute surrounding the Supreme Court?

THE COURT: Do you think this is something that the Supreme Court itself could govern by rule?

MR. LAWRENCE: Well, Your Honor, I believe, under the statute, they have the authority to issue regulations; and further regulations, obviously, could be promulgated by the Supreme Court.

THE COURT: There aren't any now. This is just general instruction: U.S.C. Training Manual. That is hardly regulation. And they are not published. Or are they?

MR. LAWRENCE: Your Honor, I am unaware. When I came in today it was the first exposure that I had had to the Police Training Division Manual.

THE COURT: They weren't published to their attorneys.

MR. LAWRENCE: Not in the context of this case. Quite frankly, Your Honor, it hasn't come up with the context of this case.

THE COURT: The government's position is I should just grant your motion for summary judgment and deny the preliminary injunction.

MR. LAWRENCE: That is correct, Your Honor, based on the papers before the Court.

THE COURT: They don't have to show irreparable

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARY TERESE GRACE-THADDEUS ZYWICKI, Appellants,	:	
v.	:	No. 80-2044
WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES, ET AL., Appellees.	:	

Washington, D. C.,

Wednesday, May 27, 1981.

The above-entitled matter came on for oral argument at 9:30 o'clock a.m.

BEFORE: CIRCUIT JUDGES MacKINNON, EDWARDS and GINSBURG.

APPEARANCES:

SEBASTIAN K. D. GRABER, ESQ., Graber, Stekler & Townsend, 1019 King Street, Alexandria, Virginia 22313; on behalf of the Appellants

R. CRAIG LAWRENCE, Assistant United States Attorney, Department of Justice, Washington, D. C.; on behalf of the Appellees

- - -

P R O C E E D I N G S

THE CLERK: No. 80-2044, Mary Terese Grace and Thaddeus Zywicki v. Warren E. Burger, Chief Justice of the United States Supreme Court, et al.

Sebastian K. Graber, on behalf of the appellants, and R. Craig Lawrence, on behalf of appellees.

THE COURT: Mr. Graber, you may proceed.

ORAL ARGUMENT OF SEBASTIAN K. GRABER, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. GRABER: May it please the Court: I am Sebastian Graber, representing the appellants in this case.

I would review the facts, but if the Court is familiar with the facts I would directly address the merits depending on the Court's inclination.

The case involves in my view the most pristine exercise of First Amendment rights that can occur in our system, and I refer specifically to activities of appellants lone leafletting and lone signholding on the sidewalks of the Supreme Court. This activity occurred near the vending machines which are situated near the curb line in the front of the Supreme Court entrance. In other words, it was very near the street and very far away from the entrances to the Court.

I would also point out that the District Court's disposition of this case, both the government and the

plaintiffs agree, was less than the best way to deal with the case, and I think we are in agreement that this Court should reach the merits of the case and I would urge the Court to do so.

The disposition below that the appellants needed to seek a permit I think was erroneous for several reasons, one being that there was no permit system to seek, and this Circuit has repeatedly ruled that an efficacious administrative remedy must exist where one is required to exhaust it.

I would further point out that appellants attack this statute upon its face, that their conduct was of pristine First Amendment activity, that the statute is the statute directed toward the regulation of speech related activity and therefore under Broadrick v. Oklahoma and the Village of Schaumburg cases the plaintiffs had standing to challenge the statute on its face on the grounds of overbreadth, in which case the particular facts and circumstances of appellants' actions become less relevant because they can point to hypothetical applications of the statute to show that the statute had too sweeping ground and impact on First Amendment rights.

QUESTION: Mr. Graber, even if we were to agree with you, if you had no administrative remedies to exhaust, still we are a court of review. Why do you suggest that we jump to a decision on the merits, rather than remand it to

the court of first instance to decide the matter in the issue?

MR. GRABER: Your Honor, I would point to this Court's decision in the Quaker I series of cases, in which Judge Bazelon upon a similar reaching by the appellants to reach the merits pointed out that in that case the facts were not stipulated to or well established. The government in that case did not stipulate to all the facts and only stipulated to facts for purposes of preliminary injunction motion.

Here we have a factual record which is not in dispute and I think that it is fairly complete if the Court will allow and take judicial notice of the filming of "First Monday in October," which occurred on January 5, 1980, the motion I filed earlier --

QUESTION: Is that a First Amendment exercise?

MR. GRABER: I feel it is a First Amendment exercise, Your Honor. I think --

QUESTION: How do you justify that?

MR. GRABER: Well, I think the arts, films particularly are embraced within the First Amendment and that is the whole --

QUESTION: Sure they are, but when they are taking a picture of something, they aren't indulging anyone.

MR. GRABER: But it is still under the statute prohibited because the statute especially prohibits the

assemblage of persons, period, no matter what they are doing. That is why I say it is over-broad.

QUESTION: Well, we've got an assemblage of persons here, but you wouldn't have --

MR. GRABER: There is no statute prohibiting their being here and they are not doing anything --

QUESTION: But they enter the court room and they enter the Supreme Court.

MR. GRABER: But we are not talking about in the Supreme Court building. I would --

QUESTION: All you are talking about is the grounds.

MR. GRABER: That's right, Your Honor. However, the government's argument that this is somehow disruptive I point out is countered by the fact that they allow routinely such filming activities which certainly is more disruptive of the decorum --

QUESTION: They don't allow it routinely.

MR. GRABER: Well, it is not in the record, Your Honor, but it was allowed in this instance -- it was difficult for me to gather evidence on this point without standing out there on a day-to-day basis. However, the vending machines provide one example of how the statute has been violated, and I think the transcript of the preliminary injunction hearing is solid on that point. Even Mr. Lawson conceded reluctantly that it was hard to get around the

vending machines as a violation of the statute because they are a device, although he --

QUESTION: In your brief you refer to the vending machines, you refer to the flags and then you made this motion with respect to the press reports of the filing of "First Monday in October." Is it your position that discovery would be of no value with respect to your position on elective --

MR. GRABER: Well, Your Honor, I think discovery could provide a basis for a stronger record on selective enforcement, however, I think the instances in the record provide enough of an example, of concrete examples. Moreover, I would point out that the facial attack of this statute provides the basis upon which other hypothetical examples can be spoken of and addressed, and in the argument before the Court of Appeals in D.C., the District of Columbia government attorneys took the position in response to a question by one of the judges that they couldn't take a picture of the judges with their college T-shirts on because that would bring attention to an organization and would be in violation of the statute, and the government's potential application of the statute is simply so unlimited.

I would simply point out that there are many statutes which currently exist which can regulate activities on the grounds of the Supreme Court, to make sure it is

peaceful and in accordance with the dignity of the Court, and there is certainly nothing to prevent the marshals from promulgating regulations. He has authority to promulgate regulations to deal with demonstrations or any activities at the Supreme Court. And in fact it may well be that large demonstrations could be altogether prohibited.

QUESTION: How about small demonstrations?

MR. GRABER: Well, I think there we are talking about something that can be allowed and regulated in a way that is conducive both to First Amendment interests of citizens and to the fair and impartial administration of justice.

QUESTION: The same statute that governs goings on in front of this Court also governs the Supreme Court, but the Supreme Court has --

MR. GRABER: That's right, there is 1507, 18 U.S.C. 1507, which is courthouse picketing, which is you have to have the intent to influence or intimidate which in their re construction was imposed in the District of Columbia in --

QUESTION: With respect to that District of Columbia construction, does that construction read any difference at all between 1507 and 1317?

MR. GRABER: In my opinion it makes them the same. They are coterminous, in my view.

QUESTION: Where does that litigation stand at the

moment?

MR. GRABER: That case has not been decided yet. It has been argued.

QUESTION: In what posture?

MR. GRABER: It is in the D.C. Court of Appeals and was argued about a month and a half ago and the Court still has the case under advisement.

QUESTION: And what happened in the Superior Court?

MR. GRABER: In the Superior Court, Judge Harmon imposed a limited construction requiring the government to a specific intent to intimidate or influence the administration of justice, and the government thereupon filed an appeal to dismiss the specific cases and is pursuing the appeal.

QUESTION: After the limiting construction, there was no further attempt to prosecute and the appeal is on the limiting construction?

MR. GRABER: That's right. However, after the limited construction came down, my clients went back to the Supreme Court. Mr. Zywicki went on one occasion and Mr. Grace went on the next, and although Mr. Zywicki specifically mentioned the limiting construction and asked the officer to check to see if the statute had not been modified, the officer did check and a gentleman came out and said it is not changed and you are not allowed to be here, and on that day Mr. Zywicki was passing out leaflets concerning problems

in Central America, nothing to do with any Court business or Court functions, nevertheless he was ordered to leave.

So my position then is that a limiting construction on this type of statute is of no benefit and indeed cannot be imposed because the Court police who are out there on the street at the Supreme Court, they simply are not imposing a limiting construction which already has been ordered by the Court of Appeals, therefore -- and the Supreme Court in Zwicker v. Koota pointed out that in over-breadth cases that limiting construction is not proper, in a vagueness case it may be, but here we have both vagueness and over-breadth, and therefore I think that the fact that the Supreme Court continues to enforce this statute means that the limiting construction is of no use, that my clients have to be arrested and be prosecuted and if they won in criminal defense, they would be vindicated. That is hardly a way to enforce First Amendment rights.

I would also point out to the Court that the District Court's comment that this is a test case, that my clients only want to test this statute and are not personally interested in expressing views about an issue is not a correct review of the record. Mr. Zywicki went to the Supreme Court on three occasions distributing handbills about issues. He did not distribute handbills talking about this statute. Ms. Grace, who is a friend of Mr. Zywicki, when she heard about

being harassed, then she went to the Supreme Court holding a sign with the verbatim transcription of the First Amendment in order to emphasize that the very Court whose duty it is to equally enforce the First Amendment and to see that the statutes are equally protected are not doing that.

I would reserve --

QUESTION: Then it was in violation of the statute?

MR. GRABER: Her activity wasn't violation at all of --

QUESTION: That picketing was in violation of the statute.

MR. GRABER: Picketing of Mrs. Green?

QUESTION: Well, you said it was, that she was picketing because she was objecting to the actions of the Supreme Court.

MR. GRABER: Not the Supreme Court, the Supreme Court police ordering her to leave.

QUESTION: They don't allow any --

MR. GRABER: Well, Justice Burger has the ultimate authority to enforce regulations and --

QUESTION: He does?

MR. GRABER: Yes, he is the one that --

QUESTION: Where does he say that?

MR. GRABER: Down the statute, all through it -- whatever it is.

QUESTION: That he can prosecute?

MR. GRABER: He doesn't prosecute. If any regulations are promulgated, he is the final one to approve them. No regulations have been promulgated by the marshal except at times at which the Supreme Court is open to the public. The only thing that exists is regulations which are not published which say that no leaflets are allowed.

QUESTION: Counsel, you argue that these First Amendment rights that you have here can't be interfered with. But if we hold with you, we open the door with ten people doing the same thing, don't we?

MR. GRABER: No, Your Honor, because the marshal can formulate regulations requiring a permit for demonstrations in excess of one person.

QUESTION: All right, ten people acting separately.

MR. GRABER: Well, I think the Court —

QUESTION: Like the White House.

MR. GRABER: Your Honor, I think the Court is well equipped to handle situations that arise.

QUESTION: Do you think so, after reading Walker actions?

MR. GRABER: Well, Your Honor —

QUESTION: How many people did they allow in Lafayette Park? Over a thousand.

MR. GRABER: Well, I don't think that any court

would say that a thousand people can gather on the sidewalks of the Supreme Court and --

QUESTION: Well, they can submit it for legal action as far as the White House is concerned.

MR. GRABER: Well, as far as --

QUESTION: You are not challenging, i.e., the validity of 18 U.S. 1507?

MR. GRABER: No, Your Honor, I'm not.

QUESTION: That is the statute which applies to all federal courts.

MR. GRABER: That's right. I think that one section is sufficient and I think 13a through K, or whatever is the scheme, contains other aspects that are valid and --

QUESTION: But you are challenging 1507.

MR. GRABER: I am not --

QUESTION: You've got one woman here that put up a sign as a picket on the Supreme Court grounds that said "Free Speech," in your own words, attempting to call attention to the Supreme Court actions and to criticize them and publicize them. Now, that is one person and that is a violation of 1507, an attempt to intimidate the Supreme Court in the action it has taken.

MR. GRABER: I respectfully disagree with Your Honor --

QUESTION: In what respect?

MR. GRABER: because she wasn't attempting to influence the Supreme Court.

QUESTION: You said she was.

MR. GRABER: I said she was attempting to bring attention to a problem that existed --

QUESTION: Well, what's the difference?

MR. GRABER: Well, the difference is that it is not the Supreme Court yet which said that you can't emphasize free speech on the sidewalk.

QUESTION: But you --

MR. GRABER: It is Congress and Congress gave the marshal the authority to enforce it and the marshal has been enforcing it, and yet --

QUESTION: What difference is that, you have made him responsible for it.

MR. GRABER: It dictates that to the Supreme Court and then Ms. Grace goes there with a sign that says "Reverse Grace v. Burger" or "Affirm Grace v. Burger," I would agree with your honor. But standing over the sign that has the First Amendment on it does not.

I would, if the Court please, reserve the rest of my time for rebuttal, and I thank you for your patience.

Thank you.

THE COURT: Thank you.

Mr. Lawrence.

MR. LAWRENCE: I'm not sure specifically physically. They were on the grounds. It was my understanding they were not on the steps of the Capitol but they were on the grounds. There was no contention that it was doing harm, as I recall. It was doing harm to the grounds. The determination was that it destroyed the park-like atmosphere, if you will, the decorum which the government in their space urged was appropriate for the grounds of the Supreme Court.

QUESTION: The statute was declared unconstitutional on its face, not as applied to the grounds in the Jeanette Rankin case, isn't that right?

MR. LAWRENCE: That's correct. The distinction drawn by Judge McGowan was basically between the political branch of government and the other branch, a finding that it was appropriate to petition Congress and this Court's determinations in the Quaker Action Group recognize the appropriateness of demonstrations to bring grievances or other issues before the executive branch.

QUESTION: (Inaudible)

MR. LAWRENCE: If it is designed to bring to public attention virtually any issue, Your Honor.

QUESTION: (Inaudible)

MR. LAWRENCE: That's correct, Your Honor.

QUESTION: (Inaudible)

MR. LAWRENCE: Your Honor, I think the substantial

state interest, as we have stated in our brief, is to maintain the appropriate decorum of the Court.

QUESTION: (inaudible)

MR. LAWRENCE: Your Honor, I think the distinction has to be in part that to the extent you get into parsing between one demonstrator and more than one demonstrator and the various issues which the person is raising, you get into an extremely unworkable area of content discrimination and a determination on the basis of the issue or the number of peopl .

QUESTION: (inaudible)

MR. LAWRENCE: Your Honor, I ---

QUESTION: (inaudible)

MR. LAWRENCE: That's correct, Your Honor, and the decisions of the Supreme Court require a balancing, and we believe that the statute strikes the appropriate balance. We are dealing with a narrowly defined area, a building that is dedicated to a specific use, and the availability of public property to propagandize various points of view are available immediately adjacent and all over the city.

QUESTION: (inaudible)

MR. LAWRENCE: Your Honor, I think that is implicit in O'Brien, for one. You have to take a look at the statute and analyze it in light of the substantial government interest and the narrowness of the prohibitions, it itself requires a

QUESTION: Mr. Lawrence, you have stressed that there is no element of selectivity, that the statute is not affected by that but bans uniformally all expressive conduct. Do you agree with the suggestion that Mr. Graber made that a T-shirt that bears a motto saying; that if a person who stands in front of the Supreme Court with such a T-shirt is violating the statute?

MR. LAWRENCE: I'm not sure, Your Honor. I am not sure how that would be addressed, whether that --

QUESTION: Well, Harvard would take a dim view of that.

MR. LAWRENCE: Your Honor, I think that the real question here is the conduct of the individuals and the conceded application of the statute here, and under the circumstances we submit that the statute is narrowly drawn and narrowly confined to that small area as it is, is constitutional, and the decision of the court below, for different reasons, should be affirmed by this Honorable Court.

Thank you very much.

THE COURT: Thank you, Mr. Lawrence.

Mr. Graber, you have one minute remaining.

ORAL ARGUMENT OF SEBASTIAN K. GRABER, ESQ.,

ON BEHALF OF THE APPELLANTS - REBUTTAL

MR. GRABER: One minute -- I will try and be brief if I don't get too many questions.

Regarding over-breadth, Broadrick and Schaumburg are clear that if the statute on its terms goes to speech, that attacks can be made, and I guess government counsel have not properly understood or read Brodrick. They all say that everything is conduct and in the ambit of the statute that is the end of the inquiry.

I would point out that this is not conduct of pure speech and, as Judge Wright pointed out in Woman's Strike For Peace v. Morton, that under the government's typical analysis every speech becomes conduct and that those types of distinction really aren't worth a whole lot, so we would have to look at what is occurring. And what we are talking about is passing out leaflets and standing, not picketing with the signs.

I would also point out that this is a public street. There are vending machines out there, there is a bus stop out there, and this occurred on the extreme edge of the sidewalk, not near the doors of the Supreme Court.

Regarding O'Brien, that was a symbolic speech case dealing with burning of a draft card and did not involve an over-breadth attack and it did not involve pure speech.

As far as Adderly is concerned, on the fact that it was a jail driveway which was closed to the public, only open for jail business, and that is where the demonstration occurred.

QUESTION: (inaudible)

MR. GRABER: I think there is. Anything can be distinguished, but I think the activity is dissimilar. I would say lone sign-holding as is involved in this case and the passing out of leaflets aren't virtually the same. If you are marching back and forth, that I think is a little different.

QUESTION: You have the litter problem in one that you may not have with the other.

MR. GRABER: The litter is created by the recipients, not the giver of the literature and that --

QUESTION: Well, it is initiated by the giver of the literature.

MR. GRABER: Well, that --

QUESTION: If they don't want it, they just throw it away.

MR. GRABER: That's right, and Havil v. Griffin and those cases in the thirties and forties, the Supreme Court viewed littering as not enough to justify restriction of free speech. There are laws against littering.

I would simply close, as the red light has gone on, and thank Your Honors, I am sure you will give consideration to this matter.

QUESTION: Let me ask you something. What about -- do you want to have higher limits on the area beyond the

curb?

MR. GRABER: Do you mean closer to the --

QUESTION: No, away, further away.

MR. GRABER: A higher limit on what?

QUESTION: (Inaudible)

MR. GRABER: Well, there is currently a permit system that deals with demonstrations across from the Supreme Court. I am not sure I understand your question.

QUESTION: (Inaudible)

MR. GRABER: The Capitol Police regulate --

QUESTION: And is that valid?

MR. GRABER: Well, under Capitol Police regulations lone leafletting is permitted without acquiring a permit. Only group activity requires a permit. And I would agree that group activity can be regulated by permit, so I don't think lone leafletting can be.

QUESTION: (Inaudible)

MR. GRABER: Yes, Your Honor, I do.

QUESTION: That is 1503?

MR. GRABER: That is 1503.

QUESTION: I know, but you didn't agree that the lone picketer was free speech in doing it.

MR. GRABER: I think since the sign contained the words of the First Amendment, that that would hardly fall within 1503.

QUESTION: Well, it intended something and it was directed to the Supreme Court.

MR. GRABER: I don't think that the Court was around to look at the sign out there.

QUESTION: You don't want that inference drawn from the action?

MR. GRABER: Well, I --

QUESTION: But some people might draw that, as you did.

QUESTION: (inaudible)

MR. GRABER: Congress shall make no law respecting establishment of --

QUESTION: And it was there because she was objecting to the Supreme Court, that they were violating it.

MR. GRABER: Not the Supreme Court, that Congress passed a law that was being enforced --

QUESTION: But our suit comes to the Supreme Court, it doesn't come to Congress.

MR. GRABER: Well, if the Supreme Court takes the case, then at that point in time I don't think --

QUESTION: No, no, the case right now is against the Chief Justice, the Supreme Court.

MR. GRABER: Because he is the one who has final authority to regulate --

QUESTION: And he hasn't done anything but you are

still suing him.

MR. GRABER: He is a defendant. We are not suing the Court, we are suing Justice Burger in his official capacity as supervisor of the marshal. We believe he would have the power to tell the marshal not to enforce this regulation. I don't know what Justice Burger has done --

QUESTION: That is what you say.

MR. GRABER: Obviously. Thank you.

THE COURT: Thank you, counsel.

The case is submitted.

(Whereupon, at 10:15 o'clock a.m., the case in the above-entitled matter was submitted.)

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The Long Island Newsday, April, 1982

Supreme Court Appealing to Itself

Washington (UPI)—The Supreme Court, in an extraordinary move, is appealing to itself to prohibit all protests and leafleting on the grounds and sidewalks around its marble-columned building.

The unusual case raises a major conflict-of-interest question over whether the justices can rule on a dispute that so plainly involves the high court itself.

At issue is a Washington appeals court decision striking down a law that allowed Supreme Court police to arrest anyone who tried to demonstrate or pass out written material around the court building on Capitol Hill.

The appeal to the high court—written by lawyers in the solicitor general's office of the Justice Department—was filed last week on behalf of Supreme Court Marshal Alfred Wong and court Police Chief James Zagami. Technically, the justices themselves are not part of the appeal. But the marshal and court police are ultimately answerable to Chief Justice Warren Burger, and Burger himself was named as a defendant in lower courts, although he is not a party to the pending appeal.

Sparking the controversy was a 2-1 ruling in September by the U.S. Court of Appeals for the District of Columbia. The court concluded that while courts can "protect the judicial process" by placing certain restrictions on the right to demonstrate and leaflet around courthouses, they cannot flatly ban all such activity. "We believe it would be tragic if the grounds of the Supreme Court, unquestionably the greatest protector of First Amendment rights, stood as an island of silence in which those rights could never be exercised in any form," Judge Harry Edwards wrote for the appellate panel.

The high court could decide this spring whether to hear the case. If the justices conclude the dispute poses an insurmountable conflict-of-interest, they could leave the appeals court ruling intact.

The appeals court decision was a victory for Thaddeus Zywicki and Mary Teresa Grace. Zywicki, an elderly Catholic missionary, was stopped once in 1978 and twice in 1980 from distributing pamphlets on the sidewalk in front of the court. In 1980, Ms. Grace was stopped when she tried to stand on the sidewalk with a sign emblazoned with the words of the First Amendment.

The law they have challenged makes it "unlawful to parade, stand or move in processions or assemblages" around the court grounds, or to display "any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement."

Edwards specifically rejected the notion that "the peace and decorum of the Supreme Court" justify such an all-out ban.

But the brief written by the Justice Department argues that there is "an alternative means of expression"—demonstrating across the street from the court—and that the government can dedicate "some of its property to symbolic uses inconsistent with public demonstrations." The high court building and grounds, located east of the Capitol grounds, should be treated, government attorneys contend, "as a symbol of the characteristic virtues of the judicial process—calm deliberation and reflection, free from outside pressure and political controversy."

High court to hear appeal banning protests, leaflets from own grounds

United Press International

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In 1980, Grace was stopped when she tried to stand on the same sidewalk with a sign emblazoned with the words of the First Amendment.

They have so far successfully challenged a law, enacted by Congress, which makes it "unlawful to parade, stand or move in processions or assemblages" around the court grounds, or to display "any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement."

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It also asserts the government can dedicate "some of its property to symbolic uses inconsistent with public demonstrations."

The high court building and grounds, located east of of the US Capitol grounds, should be treated "as a symbol of the characteristic virtues of the judicial process – calm deliberation and reflection, free from outside pressure and political controversy," government attorneys contend.

The Boston Globe, April 12, 1982